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A Report on
The Unified Family Court
of the Judicial District of
Hamilton-Wentworth, Ontario

Submitted to
The Ministry of the Attorney-General (Ontario)
and
The Department of Justice (Canada)

by

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SUMMARY

This study was conducted to determine whether a unified family court is better able to help families resolve their disputes than the existing family court system in Ontario. The concept of a unified family court derives from the recommendations made by the Law Reform Commissions of Canada and Ontario. The concept embodies several key elements: (a) exclusive, original jurisdiction in all matters of family law; (b) provision of a wide range of both legal and social strategies for resolution of disputes; (c) simplification of rules and procedures, and (d) a judiciary with specialized expertise in family law.

The Unified Family Court of Hamilton, Ontario served as the actual model for this evaluation. The first of four unified family courts in Canada, the Hamilton Unified Family Court was established in 1977 as a three-year pilot project; its mandate to continue was extended by the Ministry of the Attorney-General in July, 1980. The findings reported here support the validity of that decision.

Each of the four experimental courts has its own unique characteristics reflecting four different models of unified family court. Each of these projects is being evaluated -- thus the accumulated knowledge from these four projects will eventually provide more and better understanding of the benefits and liabilities of establishing unified family courts than could be derived from any single project.

Evaluation is concerned with both the process and outcome. Process evaluation deals with the way in which the programme is implemented. Outcome evaluation assesses the extent to which the anticipated goals of the programme are achieved. The research method included comparisons of the Hamilton Unified Family Court with both the operation of the Hamilton family court system during the years prior to unification, and the family court system in a nearby judicial district -- a non-unified family court system.

In general, the results of this evaluation support the contention that a unified family court is preferable to the existing system. There was support for: exclusive, original jurisdiction in family matters; a de-emphasis of the traditional adversary approach in these matters, and the provision of alternatives to a legal resolution. However, not all the assumptions made initially about a unified family court were supported and the findings regarding some questions were equivocal. The Hamilton Unified Family Court was assessed favourably by most members of the Hamilton Bar, by most health and social service professionals in the community and by most of the court's clients that were interviewed.

Major Findings:

- As anticipated, unified jurisdiction resulted in:
 - (a) resolution of most issues in a single court proceeding
 - (b) the consolidation of a family's separate proceedings simultaneously before the court
 - (c) a better response to the non-compliance that results from a change in circumstance, with the

terms of any court order.

- The new rules and procedures resulted in many matters, particularly divorce, being concluded at less cost and with less delay to the parties.
- Although the Unified Family Court did not have a significantly higher settlement rate of contested cases, the various dispute techniques -- including the pre-trial conference and conciliation counselling -- were found to have facilitated settlements and, the settlements were reached more quickly than in other courts.
- Many clients of the Unified Family Court reported satisfaction with the court outcome, whether settled or adjudicated. However, the Unified Family Court orders appeared to be no more "durable" than orders made in other courts; i.e., they required enforcement just as often.

An evaluation of the process by which the conceptual model was translated and implemented into the operational model, identified various problems which affected the model's ability to achieve its objectives.

The careful planning of pilot projects is both difficult and crucial. The time available for planning this project was understandably devoted mainly to the development of new rules, procedures and forms necessary for the operation of the legal arm of the court. Unfortunately, insufficient

attention was paid to the planning of the social arm, which resulted in confusion and frustration for clients, social service providers and lawyers. The social service component of the model was implemented:

- without adequate consultation with health and social service providers in the community or at the court
- without policy guidelines for Conciliation Services
- without a clearly defined organizational framework to support the service
- without the proposed intake service.

Continued lack of communication between the court and both its Conciliation Services and the professionals in the community -- particularly during the first half of the project -- tended to increase frustrations. Although some of these problems have since been resolved and plans for more systematic and regular consultations have been implemented, they demonstrate the importance of adequate front-end planning and continual consultation between the legal and social arms.

Several developments in the legal arm that deviated from the proposed model may have influenced outcomes:

- The original intent of the pre-trial conference was to involve clients responsibly in the dispute resolution process. Contrary to this intent, it was found that clients participated only minimally in pre-trial conferences. Further, although the pre-trial conference was intended as a discretionary process, it has in practice become mandatory.

- The automatic enforcement service was reduced dramatically, resulting in creditors having to assume responsibility for the enforcement of their court orders.
- Certain quasi-judicial functions were delegated to the clerk and the deputy clerk of the court during the course of the project, which resulted in a saving of judicial time. However, this provoked some concern from members of the Bar regarding the protection of the legal rights of unrepresented clients, and resulted in confusion on the part of some clients regarding the roles of the court clerk.

Many aspects of the model were successfully implemented. Close liaison with the Bar, including their representation on an advisory committee and a rules committee, promoted the necessary support of the court by the Bar. It also demonstrated the importance of preparing interested groups for the introduction of a unified family court and the importance of providing formal mechanisms for sharing of information with these groups throughout the course of the project.

On the basis of these findings, a number of recommendations are presented in the last Chapter of the report. We hope that these recommendations will be of use to the Ministry of the Attorney-General, the Department of Justice, and to the Hamilton Unified Family Court.

CHAPTER I

INTRODUCTION

The concept of a unified family court, recommended by the Law Reform Commissions of Canada and Ontario was developed as a remedy to problems resulting from a presumably inadequate family court system.

Because implementation of a system of unified family courts represents a major re-organization of the existing court system, the Law Reform Commission of Canada recommended establishing unified family court pilot projects in several centres across Canada in order to provide information on the validity of the concept and on the impact of the particular project model. The first such project, funded jointly by the Department of Justice (Canada) and the Ministry of the Attorney General (Ontario), was established in Hamilton, Ontario in July, 1977. Since then, unified family court projects have been initiated in Saskatchewan, Newfoundland and New Brunswick. The authors were contracted to conduct an independent evaluation of the Hamilton pilot project.

Programme evaluations are conducted for various reasons, depending on the nature of the programme and the body requesting the evaluation. Generally, they attempt to determine the degree to which the programme serves real needs, is implemented in a manner consistent with its philosophy and intent, and is effective, i.e., the degree to which it achieves its stated objectives. Although we assume that the efficient operation of an organization maximizes the likelihood of organizational goals being achieved, the evaluation research design does not include an operational

review. Such a study was conducted by a management consultant for the Ministry during the course of the project.

Specifically, this evaluation examines and evaluates the validity of the concept of a unified family court by addressing two major questions:

- How extensive and serious were the problems identified by the Commissions?
- Is the proposed remedy of unified family courts conceptually sound, i.e., does the remedy of unified family courts alleviate the identified problems?

The validity of a conceptual model can only be tested by evaluating an operational model, i.e., a model which attempts to translate the concept into a functioning programme. Therefore, we examine the effectiveness of the Hamilton Unified Family Court (the operational model) in implementing the concept. We then assess the impact of the Hamilton model -- did the Hamilton Unified Family Court achieve the desired (and anticipated) outcomes and what, if any, were the unanticipated outcomes? This examination of the process of implementation and the impact of the operation model leads us, as evaluators, to make recommendations; it also generates further questions.

This report is organized according to the evaluation objectives. By way of introduction we present the conceptual model developed by the Law Reform Commissions of Canada and Ontario, followed by a description of the operational model developed specifically for the Hamilton Unified Family Court. The second chapter examines the nature and extent of problems in the

existing family court system. An assessment of the effectiveness of the Hamilton Court in implementing the model (the "process" evaluation) follows in Chapter III. Chapter IV reports on the effectiveness of the Hamilton model in achieving the desired outcomes using the results of Chapter III to help interpret the outcomes. The report concludes with recommendations generated by the findings.

THE CONCEPTUAL MODEL

In 1974 the Law Reform Commissions of Canada and Ontario recommended the creation of a court with exclusive, original jurisdiction in all family law matters. The existing family court system (or "non-system" as it was labelled by the Ontario Commissioners) was viewed as inadequate in serving the best interests of families seeking legal resolution of their problems and in serving the best interests of society in general.

Problems

Problems for families as identified by the Commissions included:

- Feelings of confusion and frustration;
- Unnecessarily high legal costs;
- Handling of family problems in a piecemeal rather than an integrated manner;
- Increased aggravation of the pain and bitterness suffered by family members following marriage breakdown;
- Inordinate delays and/or inconvenience in the resolution of the families' problems.

In addition, the Commissions maintained that the existing system fails to serve the interests of society because: it is unnecessarily costly; it is not designed to preserve and strengthen the family and finally, it fails to promote respect for the law and the courts, thus encouraging distrust of the legal process.

Alleged Causes

The Commissions suggested that these problems have developed because of the following characteristics of the present family court system.

Fragmented and overlapping jurisdiction. In Ontario, four different courts handle family matters, causing many families to go to more than one court and commence more than one proceeding to resolve their problems. It was suggested that multiple court use is frustrating and confusing for families, and is costly for the state as well as for the families. Overlapping and competing jurisdiction, as well as the limited jurisdiction and concomitant lower status of the Provincial Family Court (the only court in Ontario which deals exclusively with family matters) promotes a disrespect for the legal process as a means of resolving family problems. Furthermore, fragmentation prevents any one court from viewing family problems as a whole. Consequently, the remedies granted may not be appropriately suited to the need.

Conflicting philosophies and procedures of the courts. Fragmentation of jurisdiction has prevented the development of a single and appropriate philosophy and approach to the resolution of family problems by the courts. The Superior Courts routinely apply adversarial procedures to family matters. The Law Reform Commission

of Canada suggested that, in general, this approach is inappropriate since it promotes bitterness between the parties, fails to offer legal protection to children, and precludes conciliatory resolution of family disputes. Although Provincial Family Courts generally attempt to de-emphasize the adversarial approach and resolve family problems constructively, these courts are hampered by limited jurisdiction; they are not uniformly served by well-qualified judges, and their image and status is not highly regarded in the eyes of the public and the legal profession. Differing philosophies and procedures of the several courts may result in different solutions to the same problems.

Lack of auxiliary support services. Both Commissions reported that the existing court system lacks the necessary support services (including administrative, counselling, conciliation, investigative, legal and enforcement) to adequately resolve the complex family problems brought before the courts, particularly the Superior Courts. The multiple court system is felt to have prevented development of these services because of the costs of providing each court with support services and because of the differing philosophies and procedures of the courts.

The Proposed Remedy

Because of these problems and their analysis of the causes, both Commissions recommended the establishment of a family court with exclusive, original jurisdiction. The Law Reform Commission of Canada proposed a Unified Family Court, the Law Reform Commission of Ontario proposed a Family Court of Ontario. Although the two recommended models differed somewhat, both

Commissions proposed a court with comprehensive jurisdiction over all family law matters, a court having a social as well as a legal arm and offering a broad range of techniques for resolving family problems.

Status of the Court

Although the Law Reform Commission of Canada suggested that the "ideal" unified family court should be established as a division of the existing Superior Court, presided over by federally appointed judges, it was noted that in provinces such as Ontario, where Provincial Family Courts have been established, it might be preferable to expand their jurisdiction. The Law Reform Commission of Ontario recommended abolishing the existing Provincial Family Court and establishing a separate Family Court staffed by federally and provincially appointed judges.

Procedures

Both Commissions recommended the development of rules of practice and procedure characterized by simplicity and flexibility, ensuring that the rights of the litigants and children are protected, encouraging recourse to the support services, providing the means (including pre-trial processes) for an expeditious resolution of the problems, and whenever possible, diverting families from the adversarial process.

Support Services

Legal services. Both Commissions recommended that parties be assured the right to legal advice and representation. Although it was suggested that these services be provided by members of the Bar in

private practice, the federal Commissioners also recommended that lawyers be available to provide court clients with legal advice when needed, or that clients be referred to appropriate community legal resources. When the interests of children may be affected by a court proceeding, both Commissions recommended provision for the appointment of independent legal counsel to represent them.

The Commissioners also recommended that designated lawyers or crown attorneys be available to prosecute proceedings under the Criminal Code and the Juvenile Delinquents Act rather than having this function performed by police officers, probation officers, or others.

Information and intake service. A service to assess the client's problem as well as to provide information and advice concerning possible courses of action was recommended.

Family counselling services. Although the location of counselling services (in the court or the community) would be determined by the resources of the individual communities, it was recommended that, at the very least, the court provide access to such services at all stages of the court process.

Conciliation service. A voluntary and confidential service, the purpose of which would be to promote reconciliation between spouses; but where reconciliation appeared neither possible nor desirable, conciliation counselling would be provided to facilitate resolution of various issues in dispute.

Investigative/clinical services. The court should have discretionary power to order an investigation and report for the purpose of determining custody and access. No recommendations were made regarding the location of these services, although there was consensus that investigative services should be precluded from access to the counselling or intake files, thus separating investigative from conciliation and counselling services. It was also recommended that the court have the power to order an investigation and report of the parties' financial circumstances prior to an order for maintenance or enforcement of an existing order.

Youth services. Probation services (including after-care services and detention facilities), group homes and foster homes should be available to each court.

Enforcement services. Both Commissions recommended that the Unified Family Court assume increased responsibility for enforcement of maintenance orders.

Objectives of a Unified Family Court

The Unified Family Court was proposed as a remedy for the problems assumed to be caused by the existing court system. The overall objectives of such a court, with respect to the interests of both groups -- the individual families and the state -- and as formulated by the Law Reform Commissions, the Ministry of the Attorney General, the Department of Justice and the project designers, are, with respect to families:

- Reducing feelings of confusion and frustration experienced in the legal resolution of their disputes.
- Reducing the costs of resolving their disputes through the court.
- Providing families with an informed result which is comprehensive, equitable, understandable and durable.
- Seeking to minimize the bitterness and pain.
- Reducing delay and inconvenience in the resolution of family disputes.

With respect to the state, the Unified Family Court is attempting to:

- Reduce court, legal and welfare costs in the resolution of family disputes.
- Preserve and strengthen the family and help spouses accept their responsibilities to one another, as well as to their children.
- Promote conditions which encourage a respect for the law and the courts.

Unifying the exercise of jurisdiction in all family law matters exclusively in one court was recommended as the optimal way of achieving these objectives.

Unification of jurisdiction and integration of various legal and social remedies would allow the court to pursue the following instrumental objectives:

- Avoid the resolution of issues on a piecemeal basis through the

consolidation of related issues.

- Develop judges who are specialists in dealing with family problems, assure a consistent judicial philosophy and thus provide a more informed result.
- Simplify the process of resolving family matters through the court.
- Promote reconciliation whenever possible and desirable.
- Help the parties to settle the issues in dispute when reconciliation is not considered possible.
- Protect the legal rights and interests of all court clients including children, who might be directly or indirectly affected by a family court proceeding.

The identified problems, their causes, the proposed remedy and its objectives, together formed what we have termed the "conceptual model".

In response to the recommendations of the two Commissions, the Family Division of the Provincial Court in Hamilton proposed a detailed plan for a pilot project to test the validity of the conceptual model described above. To translate the conceptual model into an operational model -- one capable of achieving the desired objectives, and at the same time be economically viable, was a challenging and difficult task. The project designers had to develop a model which would be flexible enough to respond to the needs of the community, as well as respond to both anticipated and unanticipated events. We turn now to the operational model proposed for the Unified Family Court in Hamilton.

THE HAMILTON UNIFIED FAMILY COURT -- AN OPERATIONAL MODEL

The first Unified Family Court, established as a separate court by the passage of Bill 189, began operation in July, 1977 as a three-year pilot project in the judicial district of Hamilton-Wentworth. Replacing the former Provincial Court (Family Division) of Hamilton-Wentworth, the model was designed by the two judges of that court. They, together with one other judge, also a former Provincial Family Court judge, were sworn as judges of the Unified Family Court, County or District Court, Surrogate Court and as local judges of the Supreme Court. Each judge was authorized to exercise the jurisdiction of a judge of the Provincial Court (Family Division). The Hamilton Unified Family Court has exclusive, original jurisdiction over family matters as set out in the Unified Family Court Act, 1976. (See Appendix A.)

The Hamilton court proposed to realize the objectives noted earlier, using a variety of techniques, including specially drafted rules of practice and procedure, as well as appropriate legal and social services.

Rules, Forms and Procedures

The rules were intended to be simple, clear and comprehensive and to "be construed liberally so as to secure an inexpensive and expeditious conclusion of every proceeding consistent with a just determination of the proceeding." (Section 2, Rules Made Under the Unified Family Court Act, 1976.)

The rules permit more than one claim against a party and permit the court to

order the consolidation of two or more proceedings. Setting of a date for hearing at the commencement of every proceeding was designed to assure an expeditious conclusion for each proceeding.

Forms were designed to be simple and flexible, permitting the parties to make all the necessary claims on a single form under the relevant Acts.

The Pre-Trial Conference, a voluntary process, would be convened by a judge in matters in which a dispute had been filed. The purpose of the conference, scheduled as soon as possible after filing of the dispute, would be to help the parties reach an early settlement of the issues in an informal setting. If settlement was not possible, the purpose would be to narrow the issues for trial. The proposed model called for the participation of the parties, their counsel and, in those cases affecting the welfare of children, a social worker from the Official Guardian's Office or a court conciliator, and the child's lawyer, if one had been appointed.

It was expected that the pre-trial conference would (a) increase the settlement rate; (b) bring about settlement at an earlier stage than might otherwise occur; and (c) in those cases in which settlement was not possible, reduce the trial time. The elimination or reduction of trial time would result in a savings for both the families and the state.

Enforcement Services

Under the automatic enforcement programme which was introduced in the Provincial Courts (Family Division) in 1973, a support order made by any court can be registered with the Unified Family Court, or the Provincial

Family Court elsewhere in Ontario, for enforcement. In this programme, the responsibility for enforcement lies with the court rather than with the creditor (the party in whose favour the order is made). The enforcement clerk first contacts the defaulting spouse with a reminder notice, attempting to resolve the issue without a court summons; if the notice is unsuccessful, a summons to show cause (notice of default) is issued. The purpose of this programme is (a) to reduce the arrears accruing on maintenance orders; (b) to save the creditor the legal costs of having the order enforced; (c) to prevent antagonism between the spouses when one spouse must bring the defaulting spouse back to court; and (d) to try to help the defaulting spouse accept his/her obligations for the support of a spouse and/or children. The Hamilton Unified Family Court model proposed to continue this automatic enforcement programme.

The pre-hearing process in enforcement matters, although not included in the original design, was introduced shortly after commencement of the project in order to provide an informal forum for the debtor to explain his arrears and, with the help of the conference officer, to formulate a plan for reducing the arrears, thereby reducing the number of cases requiring a court hearing. Identification of an access problem could result in a referral to the Conciliation Services for resolution. A change in circumstances, sometimes the cause of a default on an order, might result in the conference officer recommending an application to vary the order. It was assumed that the pre-hearing conference, convened by the clerk or deputy clerk of the court would permit a more expeditious hearing and result in more efficient use of judicial time.

Intake Service

The original design of the Hamilton Unified Family Court included an intake service. At the pre or post-court stage, the intake worker was to see all court clients seeking assistance, make a preliminary assessment of the problem, then depending on the nature of the problem, refer the client to a conciliator (if the problem was a matrimonial one), the duty counsel, a Justice of the Peace or an enforcement clerk.

Counselling Services

All counselling (marriage, separation, family, budget) was to be provided by agencies in the community, which, along with the in-court Conciliation Services, make up the "social arm" of the court. This model, i.e., the use of existing community resources to provide counselling for family court clients, was chosen to preserve the separation between the adjudicative and therapeutic functions of the court, and to avoid duplication of the existing community services, thus providing a more efficient model of social service delivery to family court clients.

Conciliation Service

Two in-court conciliators were to provide all conciliation counselling (short-term crisis intervention designed as a voluntary alternative to the adversary process) regarding custody, access, maintenance and/or minor property disputes. It was proposed that conciliation could be used at any stage in the court process and that it be made available in every case at both pre and post court stages. The purpose of this service was to encourage spouses to explore the possibility of reconciliation, including

the use of referrals to community agencies for counselling and, when reconciliation appeared neither possible nor desirable, to help families settle ancillary issues.

Investigative Services

a) Custody and access matters. The rules of the court were designed to permit the judge to order an investigation related to a proceeding in which support, or custody of, or access to a child is in dispute. Although a plan for provision of this service was not clearly formulated at the commencement of the project, it was assumed that one conciliator would provide this service. The purpose of an investigation was to gather evidence on the relevant issues for presentation to the court, and to provide the court with recommendations respecting arrangements in the best interests of the child. Unlike conciliation, investigation was to be a mandatory service in which communication between the parties and the investigator is without privilege. Although the primary purpose was to garner evidence for court, it was hoped -- and assumed -- that in some cases issues respecting the children would be settled as a result of the investigation.

b) Financial matters. In addition to the investigative service described above, the model included provisions for a judge to direct an officer of the court to conduct a "reference" and to provide directions for the conduct of the reference. The proposed model was not specific as to who would conduct the references and the kinds of matters where a reference might be used, although it was assumed that maintenance would be referred for a reference (as proposed by the Law Reform Commission of Canada).

Youth Services

The (then) Provincial Court (Family Division) of Hamilton-Wentworth had a history of actively supporting delinquency prevention and treatment programmes. The new Hamilton Unified Family Court proposed to continue to support community programmes which attempted to divert juveniles from the justice system, as well as research projects operated by probation services and other publicly and privately funded agencies.

An observation and detention home would continue to carry out any assessment and treatment plans ordered by the court, assuring attention to the juveniles' legal, medical and physical needs while in detention.

A community mental health clinic, serving children and their families, would continue to provide the court with psychiatric and psychological assessments of juveniles when requested. Following assessment, the juvenile and his family might voluntarily embark on a treatment programme at the clinic.

The juvenile probation and after-care programme of the Ministry of Community and Social Services would continue to provide the court with social history reports and offer a variety of programmes for probationers, including a community service programme and the use of volunteer probation officers to provide counselling.

Legal Services

a) Legal representation for children. In those cases in which a child might be directly or indirectly affected by a court proceeding, the rules were

designed to permit the court to appoint a lawyer from a panel of lawyers, acting as representatives of the Official Guardian, to represent the child's interests. The appointed lawyer would then determine the nature of the intervention.

b) Advice for adults and juveniles. Legal Aid Duty Counsel would be present at the court to assist and advise those clients seeking information with respect to their legal rights. Although duty counsel would be available to provide information and advice, legal representation would be provided by members of the Bar in private practice.

Legal Aid Duty Counsel would also be present at the court to assist in juvenile matters, although the judge could direct that independent counsel be appointed for the child. A crown attorney would be available to prosecute cases in which the juvenile entered a plea of not guilty.

These then, are the means provided by the Hamilton Unified Family Court to achieve the desired outcomes. The following section describes the research methods used to evaluate this innovative project.

RESEARCH METHODOLOGY

In evaluating the Hamilton Unified Family Court, it was decided to focus on matrimonial matters, since the problems identified by the Law Reform Commissions and the changes created by the establishment of the Unified Family Court (the proposed remedy), focused on the handling of these matters. This focus does not imply that either the court or the evaluators viewed juvenile or child welfare matters as being less important than matrimonial matters. Rather, there were no proposed changes in the rules, procedures and services with respect to juvenile and child welfare matters.

The evaluation addresses four major questions:

- (1) What is the extent and severity of problems in the existing (non-unified) court system? The answer to this question provides comparison data by which the effects of the Unified Family Court can be assessed.
- (2) Was the operational model (the Hamilton Unified Family Court) implemented in a manner congruent with the conceptual model?
- (3) Did the Hamilton Unified Family Court have the desired impact?
- (4) Can the results be generalized to other settings?

To answer these questions, data were drawn from a variety of sources. A random sample of matrimonial cases^{(1)*} commenced in the Hamilton Unified Family Court between July 1, 1977 and December 31, 1978, was selected.

* see footnotes at end of report

These cases were followed (by monitoring the court files) from commencement through to conclusion, and for varying periods following conclusion of the proceedings.⁽²⁾ The court files provided information on the number of other proceedings which had been commenced, the support services used to aid in the resolution of issues, the number of cases settled, the time expired between commencement and conclusion of the proceeding, the number of court appearances, and the number of cases requiring subsequent enforcement of the court order, etc.

Comparative data were collected on randomly selected samples of cases commenced in the family court system in the judicial district of Hamilton-Wentworth during the three-year period prior to unification, and in the family court system in the judicial district of Kitchener-Waterloo⁽³⁾ between July 1, 1977 and December 31, 1978.

Randomly selected samples of clients were contacted upon conclusion of their court proceedings to solicit their participation in interviews designed to obtain the client's assessment of the court experience. Although more information might have been obtained had we been able to interview only clients whose court files had been coded, this proved to be impractical. Applicants and/or respondents to court proceedings were interviewed at least one month after, but within three months of the conclusion of the proceeding. One hundred and forty-five Unified Family Court clients (24% of those contacted) were interviewed, and 43 clients (16% of those contacted) who used the courts in Kitchener-Waterloo were interviewed during the same time period.

Three other samples of Unified Family Court cases were selected to provide in-depth information on the various "components" of the court:

- Observational data were collected on a sample of 100 pre-trial conferences convened over a one year period commencing in September, 1978. These cases were followed to their conclusion in an attempt to determine the effects of the pre-trial conference.
- Data were also collected on 120 default cases to assess the effectiveness of the pre-hearing conference procedure in enforcement matters.
- A randomly selected sample of cases referred to the Conciliation Services was studied to determine the effectiveness of this service.⁽⁴⁾

Representatives from 10 different community social service agencies were interviewed during the Summer of 1979, and in the Fall of the same year, questionnaires were sent to 145 members of the Family Law section of the Hamilton Law Association, in order to obtain an assessment of the court by the social and legal service professionals in the community. There was a 50% rate of return to these questionnaires.

Other data sources included:

- The researcher's field notes, taken during her daily presence at the Unified Family Court where she observed the operations of the court, met with court staff, and attended various meetings.

- Data provided by the Ontario Legal Aid Plan including: legal aid accounts paid in Hamilton-Wentworth and Kitchener-Waterloo, both prior to and after unification; services provided to clients by Legal Aid Duty Counsel at the Hamilton Unified Family Court between December, 1978 and April, 1979.

Data collection began in early 1978 and continued until the Spring of 1980. All data from the court files, client interviews, the legal survey, and the pre-trial and conciliation studies were coded for computer storage and analysis.

CHAPTER II

ASSESSMENT OF THE EXISTING ONTARIO FAMILY COURT SYSTEM

It is alleged that the existing family court system with its fragmented jurisdiction, reliance on the adversarial process and lack of auxiliary support services, results in problems both for the families using the courts and for the state, as represented by various levels of government. These problems can be grouped into two categories:

- (1) efficiency; the system is thought to be costly and slow
- (2) the quality of justice; the system is thought to be incapable of giving families the most informed and equitable result; it neither strengthens the family nor promotes respect for the law or the court

To document these problems, data were collected on two non-unified court systems, Kitchener-Waterloo and Hamilton-Wentworth. Cases were selected randomly for the court systems of both judicial districts, including: proceedings commenced under The Deserted Wives and Children's Maintenance Act (DWCMA) in the Provincial Court (Family Division); civil actions commenced under one of the several acts⁽⁵⁾ (excluding The Divorce Act) in any of the four courts with jurisdiction (Supreme, County, Surrogate, Provincial Family), and petitions commenced under The Divorce Act in the Supreme Court (see Table 1). Data from these court files and data from interviews (with 43 randomly selected clients who concluded actions in the Kitchener-Waterloo court system in the Spring and Summer of 1979) were

analysed to answer the following questions:

- What proportion of families initiated more than one proceeding to resolve their problems?
- How long did it take the courts to conclude family matters?
- How much did it cost families to resolve their problems through the courts?
- What services did this system provide for families?
- What proportion of families experienced frustration and confusion in their use of the system?
- Did clients feel that the results were just and arrived at with concern for the family?
- Did the clients understand the court process and its results?
- What were the clients' subsequent attitudes toward the law and the courts?
- What changes would clients like to see made in the court system?

The findings are presented below.

Number of Courts

In each sample the number of cases in which family proceedings had been commenced in other courts at any time prior to the target action,⁽⁶⁾ and up to three years after conclusion of the target action were counted. In the DWCM sample (from the Provincial Family Courts), it was found that 36.4% of the Hamilton clients, and 16% of the Waterloo clients had used at least one other court, i.e., other than the Provincial Family Court. Two factors which may contribute to the apparent less frequent use of other courts by the Waterloo clients are (a) the longer follow-up period of the Hamilton

cases, and (b) the introduction of comprehensive family legislation (The Family Law Reform Act) during the middle of the Waterloo sampling period, which might have affected subsequent court activity.

In the sample of civil actions (excluding divorce) it was found that, in 45% of the Hamilton cases and 30% of the Waterloo cases, at least one other court was used before or after the target action. (Again, the difference in proportions between the two samples may be partly attributed to the factors noted above.)

With divorce actions commenced at the Supreme Court, it was found that in contested cases, 52% of the families in Hamilton and 40% of the families in Waterloo had used one or more other courts before and/or after the divorce action. For uncontested divorces, the proportions were 43% (Hamilton) and 20% (Waterloo). Grouping contested and uncontested divorce actions, it was estimated that 44% of Hamilton clients and 23% of Waterloo clients used at least one other court to resolve a family dispute.

Many of the clients who used more than one court did so in order to have their court order enforced. In Ontario, the Provincial Court (Family Division) has jurisdiction over the enforcement of maintenance orders. Prior to unification, 20% of the orders enforced in the Provincial Family Court in Hamilton were made in the Supreme Court or Surrogate Court. In the Provincial Family Court in Waterloo prior to The Family Law Reform Act, 35% of all orders enforced were superior court orders; after The Family Law Reform Act this proportion rose to 50%.

In summary, sampling from a wide range of family matters commenced in non-unified family court systems, we estimate that approximately 40% of Hamilton litigants and 25% of Waterloo litigants used more than one court to resolve family disputes.

Number of Proceedings

Closely related to the number of courts used are the number of proceedings commenced. While The Family Law Reform Act (proclaimed March 31, 1978) allows several claims (including custody, access, maintenance, etc.) to be made in a single proceeding (and may therefore reduce the number of proceedings) three courts have jurisdiction to hear matters under this Act; also, the jurisdiction of the Provincial Court (Family Division) is limited.

Of proceedings initiated under the DWCMA, 49% of the Hamilton and 28% of the Waterloo sample had instituted at least one other proceeding, exclusive of enforcements and variations. In approximately 10% of the cases in both samples, another proceeding was commenced within six months of the DWCMA action.

Sixty-five per cent of the civil cases sampled in Hamilton and 35% of civil cases sampled in Waterloo, commenced at least one other proceeding. This other proceeding was commenced within six months of the target action for 30% of the Hamilton and 18% of the Waterloo cases.

In 57% of the contested Hamilton divorces and 44% of the contested Waterloo divorces at least one other proceeding was commenced (43% and 27% of the

uncontested divorces respectively in Hamilton and Waterloo), giving estimates of 45% and 30% for the entire population of divorces commenced in Hamilton and Waterloo. In 10% of all divorce cases another proceeding was commenced within six months of the divorce action.

These findings indicate that up to half the spouses seeking resolution of a family dispute through the existing court system are likely to commence more than one proceeding, excluding enforcements and variation proceedings. More significantly, up to 25% of the spouses commenced two proceedings within six months of each other, suggesting that many clients sought to have various issues resolved at the same time. Perhaps in this "fragmented" system, the parties found it necessary or to the advantage of one side, to commence more than one proceeding. In only 20% of those cases in which two or more proceedings were before the courts at the same time, were two proceedings consolidated to be disposed of in one proceeding, a finding which may have been due to fragmented jurisdiction.

Delayed Resolutions

There were differences in the times taken by the different courts to handle various matters. The Provincial Family Court tended to dispose of family matters more quickly than did the higher courts. Civil matters were concluded in the County Court in less than three months, on the average. In Hamilton and Waterloo respectively, matters commenced under the DWCMA were concluded in an average of 62 and 54 days from the time of laying a charge. With the introduction of The Family Law Reform Act, similar matters involving support and/or custody and access, were concluded in an average of 79 days in the Waterloo Provincial Family Court. In the Surrogate Court,

custody matters under The Infant's Act were concluded in Hamilton and Waterloo respectively in an average of 75 and 80 days. Matters in the County Court (primarily property division) were concluded, on average, in 88 days in Hamilton and 52 days in Waterloo.

Clients using the Supreme Court experienced the greatest delay. Civil actions, including custody, alimony, property division but excluding divorce, took an average of 315 days till disposition in both Hamilton and Waterloo. Uncontested divorces took an average of 163 days in Hamilton and 146 days in Waterloo and contested divorces took 420 days and 373 days respectively in Hamilton and Waterloo.

It must be left to the courts and the clients to judge whether these "delays" are unacceptable. Of the 43 clients interviewed in Waterloo (24 Supreme Court, 19 Provincial Family Court), 28% reported that the length of time taken to conclude the matter was harmful, either financially or emotionally. It should be noted though, that 19 of the 24 Supreme Court cases were uncontested divorces; we might speculate that they would be less likely than people in contested actions, to view the length of time as harmful.

Legal Costs

Of the 27 Waterloo clients represented by lawyers, 18 reported legal costs as follows:

Less than \$300	-	2 (Provincial Court)
\$300 - \$500	-	4 (Supreme Court)
\$500 - \$700	-	6 (Supreme Court)
\$750 - \$1,000	-	1 (Supreme Court)
\$1,000 - \$1,500	-	3 (Supreme Court)
More than \$1,500	-	2 (Supreme Court)

On the basis of the amount of legal service rendered, 50% rated the cost as too high, 50% as reasonable. Clients also incur other costs. For example, 50% of the clients who took time off work to attend court reported having lost wages as a result.

Data provided by the Legal Aid Plan of Ontario show the differences in costs of conducting proceedings in different courts; Supreme Court actions are much more costly than Family Court actions. (Table 2).

Auxiliary Support Services

Many of the legal and social services recommended by the Law Reform Commissions for inclusion in a comprehensive family court are already available to varying degrees in the 54 Provincial Courts (Family Division) in Ontario.

A survey conducted by the Office of the Chief Justice (Ministry of the Attorney General, 1978) reported the following services in Ontario Provincial Family Courts.

Legal Service. Legal Aid Duty Counsel are present on a regular basis in 56%

of the courts for child welfare matters; 91% for juvenile matters; 75% for criminal matters, and 62% for maintenance matters. Duty counsel advise clients, refer them to the appropriate legal resources and appear in court on summary matters only.

One court only reported that there is no crown attorney to prosecute juveniles on criminal matters. Crown attorneys are present at all juvenile hearings in 25% of the courts, and at all adult criminal hearings in 40% of the courts. In the remaining courts the crown attorney attends when a juvenile pleads not guilty, to prosecute adults charged with indictable offences, and at the special request of the court.

Intake Service. Although only three courts (5%) have full-time intake workers, all but one court provides intake for matrimonial matters. In most courts the intake function is performed by a justice of the peace or clerical/secretarial staff member; the intake worker in nine courts (17%) is a qualified counsellor. Sixty-five per cent of the courts reported that a full-time intake worker would be of assistance.

Family Counselling. Sixteen courts (30%) reported that family or marriage counselling is "regularly available" in the court, although only 11 (20%) courts report having qualified counsellors on staff. Another 35 (64%) reported the availability of these services in the community.

Clinical/Assessment Service. Sixty-two per cent of the courts reported the availability of psychological assessments of juveniles when needed. However, 12 courts (22%) reported that their communities lack mental health

facilities (hospitals and clinics) and health professionals; consequently no clinical/assessment services are available.

Conciliation Service. In a report for the Ministry of the Attorney General, Irving and Wepler (1978) reported on six court conciliation projects operating in Ontario (including services at the Unified Family Court and the Provincial Court in Kitchener-Waterloo). All offer conciliation of custody, access or maintenance disputes. (Only the Toronto project offers service to Supreme Court clients.)

Youth Services. Eight per cent of the courts have a probation officer in attendance at all juvenile hearings. Currently, there are 24 Observation and Detention Homes in Ontario operated by the Ministry of Community and Social Services and five more are planned. Each of four regions in the province -- Eastern, Central, Western and Northern -- has both secure and non-secure facilities, and some of these operate home supervision programmes. All family courts have access to a home, although more than half of the judicial districts do not have homes within their geographical area. For example, the Arrell Observation Home for Children in the city of Hamilton serves the districts of Hamilton-Wentworth, Lincoln, Niagara, Brant, Haldimand and Halton.

Enforcement Services. The automatic enforcement programme was introduced into the Provincial Family Courts in 1973, although the courts had already been receiving and disbursing moneys paid under court orders and enforcing them at the request of the party in whose favour the order was made. Under the automatic enforcement programme, clerks review the accounts regularly

and commence enforcement proceedings automatically when the payer has defaulted on the order.

In summary, some of the support services recommended by the Law Reform Commissions are now being provided, though not uniformly, by most Provincial Family Courts. However, with minor exceptions, these support services are unavailable in the Superior Court.

Findings from the interviews with Waterloo court clients indicate that there is a need for such special services in handling family matters. Seven clients (16%) stated that an information service would be useful to help clients understand the court process. Thirty per cent of the Supreme Court clients and 50% of the Family Court clients stated that they would have used a conciliation service had it been available to them.

The Quality of Justice

Measuring the client's assessment of the quality of the court experience is more difficult. Nevertheless, some interesting results were obtained from the interviews with clients.

Over 75% stated that they felt the courts should treat family matters differently than other matters. They reported feeling this way because of the highly emotional nature of these matters, because each case is "individual", and because children's lives are affected. Some clients reported feeling anxious, embarrassed and confused as a result of the court experience. (We recognize that parties to non-family actions may also feel the same way for the same reasons.)

When asked in what ways, if any, family matters should be treated differently, clients offered the following: private hearings (25%); less formality in the courtroom (5%); availability of social workers (7%); availability of an information service (16%); judges who are specialists in the area of family law (2%); separation (in the court system) of the hearing of family and non-family matters (5%); more expeditious hearing of family matters (5%).

Some clients (20%) stated simply that family matters should be treated more personally and compassionately. Forty-four per cent of the interviewees reported that the judge seemed to lack "concern" about their case.

Those who attended court for an uncontested divorce generally commented that their experience had been satisfactory, although some would have preferred a private hearing and better scheduling so that they would not have had to take so much time off work.

Most clients stated that they understood the court order and of the 32 clients who obtained a decree or order, including terms of maintenance, custody, access and/or property division, 58% reported satisfaction; 36% reported being dissatisfied.

Summary

The findings then, support the concerns expressed by the Law Reform Commission regarding problems experienced by families who attempt to resolve disputes in the existing court system.

- Up to 40% of the parties sought resolution of family disputes in two or more different courts.
- Up to 50% of the parties commenced two or more civil proceedings, and of those cases in which two proceedings were simultaneously before the courts, consolidation of proceedings occurred in only 20% of these cases.
- Supreme Court actions took longest to conclude; with contested divorces taking over a year until final disposition. Many clients reported that speed in handling a case is important and that delays are harmful in various ways. However, clients had different opinions as to what constituted an "unacceptable" delay.
- The legal costs of Supreme Court actions are greater than those in other courts, and although the costs are less in the Provincial Family Court, its limited jurisdiction often forces families to commence certain types of proceedings in higher courts.
- Most Provincial Courts now provide many of the auxiliary support services recommended by the Commissions, although these services are not uniformly provided. Virtually none of these services are provided by the higher courts.

While most clients report having an understanding of, and satisfaction with the court outcome, some who had used more than one court described the experience as frustrating.

Many felt that family matters should be treated differently by the courts,

suggesting private hearings, less formality in the courtroom, the availability of social workers, judges who are specialists in family law, separation of family from non-family matters in the court system, expeditious resolution and more personal and compassionate treatment of these matters.

We now turn to the process in Hamilton of translating the conceptual model into an operational model.

CHAPTER III

THE HAMILTON UNIFIED FAMILY COURT -- AN EVALUATION OF THE PROCESS

This chapter examines the operational model of the Hamilton Unified Family Court, its implementation and development over the three-year project period. The "process evaluation" describes the way in which the conceptual model is translated into an operational model, discusses the discrepancies between the two models, and describes the way in which the programme develops in response to internal and external events, some anticipated and some not. This type of evaluation provides information useful to programme managers for decision making, and to policy makers for planning and implementing future programmes. Process evaluation also provides a context for understanding and interpreting programme outcomes.

The Unified Family Court is a complex system having a number of functions and employing a variety of strategies and services. Since they are all interdependent, one on the other, the "whole is greater than the sum of its parts".

The first section of this chapter examines the four main innovative programme components to determine the effectiveness of each in meeting its own particular objectives, and the part played by each in attempting to reach the various instrumental objectives listed in Chapter I. These components are:

I The Pre-Trial Conference

II Enforcement Services

III Conciliation Services

IV Legal Services

The approach used in assessing each of these four parts includes an examination of:

- Objectives: the specific goals of the service or strategy.
- Structure: the administrative organization -- formal and/or informal -- required to provide the strategy or service.
- Target Group: the specific client group served.
- Functions: the activities or means by which the goals are to be achieved.
- Results: how the strategy affects the target group.

The second section of this Chapter looks at the effectiveness of the model as a whole in reaching the instrumental objectives assumed to be necessary to achieve the desired impact. By synthesizing the results presented in Section I to interpret the results of the whole process, a context is provided for interpreting the outcomes presented in the next Chapter.

Section 1: Evaluation of the Parts

I The Pre-Trial Conference

Objectives

Use of the pre-trial conference in matrimonial matters is not unique to the Unified Family Court. It has been used by the Supreme Court in Toronto for

several years, and has also been used by the County and Provincial Family Courts of Kitchener-Waterloo for the past one and a half years and three years respectively. So while not unique to the Unified Family Court, it is viewed, nevertheless, as one of the most important dispute resolution strategies employed by this court.

A practice memorandum distributed to the Hamilton Bar in August, 1977 stated that "the pre-trial conference concept forms the basis of the philosophy of the Court, namely to give the parties and their counsel an alternative method to resolve their cases rather than the adversarial approach".

The primary objective of the pre-trial conference is to settle matters entirely or partially. When matters cannot be settled entirely, it is proposed that the pre-trial conference will have the following effects:

- organize the case for trial, i.e., narrow the issues for trial, estimate the trial time needed and determine what further steps, if any, are necessary to prepare for trial
- reduce the number of cases requiring discoveries or valuations
- reduce the number of cases with interlocutory motions

It is assumed that the consequent elimination or reduction of time for interlocutory motions, discoveries and trial will reduce legal costs to the parties; reduce court costs per case (judicial, administrative, clerical); conclude cases with less delay, and, that the resulting client-negotiated settlement (perceived to be more equitable and satisfactory than adjudication), will be more durable.

The court believes that the probability of achieving these objectives at the pre-trial conference is increased if the following conditions are met:

- Valuations of property and discoveries, if needed, have been completed prior to the conference.
- Counsel have reviewed the available evidence and have researched the law.
- Clients are adequately prepared for the conference.
- Preliminary attempts have been made to arrive at a possible settlement.

It is obvious that the co-operation and efforts of counsel are viewed as essential in meeting the goals of the pre-trial conference.

Structure

The pre-trial conference is incorporated into the regular court process by Rule 21 under The Unified Family Court Act which states:

21. (1) For the purpose of resolving or narrowing the issues or of settling the procedures at a hearing, the Court, at any stage in the proceeding, with the consent of the parties, may convene one or more meetings of the parties before a Judge of the Court or a person designated by the Court.
- (2) The person before whom a meeting under subrule 1 is convened shall present a memorandum of the matters agreed upon by the parties at the meeting to the parties for their approval and shall file the memorandum.
- (3) A Judge before whom a meeting under subrule 1 is convened shall not preside at the hearing without the consent of the parties.

This is the only rule governing the practice of the pre-trial conference. The manner in which a pre-trial conference is conducted is at the discretion of the pre-trial judge.

Although not mandatory, a pre-trial conference is scheduled in almost every matrimonial case in which a claim is disputed, without "the consent of the parties".

Following the filing of an answer (dispute of a claim), the trial co-ordinator schedules a half-hour conference on the first available date convenient for the parties and their counsel. Pre-trial conferences are now convened two days per week but prior to the appointment of a fourth judge they were held one and a half days per week. A trial, if needed, is not scheduled until the pre-trial conference has taken place. Of the lawyers surveyed, 34% were opposed to this practice. They suggested that trial dates should be issued before the pre-trial conference and that the scheduling of a pre-trial conference should be at the discretion of the parties and their counsel.

An attempt is made to hold the conference as soon as possible in order to avoid delay, reduce the need for interlocutory motions, and avoid a hardening of each side's position. Data collected on a randomly selected sample⁽⁷⁾ of 100 pre-trial conferences indicate that, on average, the first pre-trial conference was held 119 days (4 months) after the action had been commenced. Although this interval is longer than considered desirable, it should be noted that conferences were often scheduled much sooner but had to

be adjourned because the matters were not ready for pre-trial; the recent addition of a fourth judge has facilitated the earlier scheduling of conferences.

The Target Group

Although proposed as a method for settling matrimonial disputes, child welfare matters are now conferenced as well. The initial policy was to schedule a pre-trial conference only when an answer or defence had been filed in matrimonial matters commenced under The Divorce Act and/or The Family Law Reform Act. Of an average of 120 divorce petitions filed each month, 20 were contested; approximately 90 applications with claims under The Family Law Reform Act were filed monthly, 40 of which were contested, and of a monthly average of 20 motions to vary an existing court order, 5 were contested. It was found too, that occasionally, pre-trials were scheduled without a filed answer (approximately three per month). Thus each month, an average of 65 matrimonial matters were scheduled for pre-trial.

The dispute does not have to be of a specific nature; any tryable issue may be pre-tried. We observed that pre-trial discussions most often revolved around quantum, entitlement to support and division of family assets. Lawyers reported most often that these issues benefit from a pre-trial conference. Although contested custody cases are pre-tried, the complicated nature of these cases and the often insufficient information available at pre-trial, makes discussion difficult. It was assumed that custody cases would be adjourned for conciliation or investigation.

Functions

In the original model, described in the Ministry of the Attorney General's "Submission to the Government of Canada for a Unified Family Court Project in Hamilton, Ontario" (1977), the pre-trial conference was to be "held on a voluntary basis, as is the current practice in the Supreme Court at Toronto" (page 11, Submission) and the parties would attend the conference since it "would provide an opportunity to see both parties interacting, so as to assess the feasibility of any agreed upon provisions as to maintenance, custody and access" (page 11, Submission). Although the model also suggested that a conciliator might participate in the conference when directed by the judge, or at the request of the parties and their counsel, there was no intention from the outset of this project, to involve the conciliator in this manner.

No guidelines exist as to the manner in which the conference should be conducted; what is discussed at the conference is left to the discretion of the pre-trial judge. Each judge has developed his own style -- whereas one judge might rely on confrontation ("knocking heads together" as described by one lawyer), another judge uses mediation. The parties may be present in the conference room from the start, or join the conference after the judge has commenced the conference with counsel only, or not join the conference at all. But all judges agree that the parties' presence in the court building during the conference is necessary, and that part of the pre-trial judge's function is to provide a tentative view having considered the facts presented at the pre-trial conference. It was assumed that in some cases more than one conference might be beneficial, in which case the pre-trial

would be adjourned for completion before the same judge.

The proportion of cases requiring more than one conference was not predicted. Thirty-four per cent of the cases in the sample had more than one scheduled pre-trial⁽⁸⁾ (26% had two conferences, 5% had three and 3% had four). A few lawyers (5%) were strongly opposed to scheduling more than one pre-trial, although no other respondents offered comments in this matter.

In almost all cases (98%) both parties were represented by lawyers. (There are very few contested matters at the Unified Family Court where neither party is represented by counsel.) One judge believes that pre-trial conferences do not work well unless the parties are represented; most members of the Bar share this view. Only 12 of the 74 lawyers surveyed (16%) believed that it is not necessary for parties to be represented at the pre-trial conference. However, one judge in the Provincial Family Court in Waterloo, where many clients are unrepresented, reported that he believes pre-trial conferences can be effective without lawyers.

In the research sample, both parties were present for the first conference in 15% of the cases; both were present in the court building (but did not attend the conference) in 40% of the cases, and in 14% one or both parties were not even present in the building. Including second or third pre-trial conferences, we observed that both parties were present for part or all of at least one conference in only 49% of the cases. Forty-six per cent of the lawyers stated that the parties should always, or usually, be present for the entire conference. Ninety per cent stated that the parties should always, or usually, be present for at least part of it. The lawyers stated

that the presence of the parties at the conference increases the chances of settlement, particularly if the judge presents his view to the parties.

Of the clients interviewed, pre-trial conferences were convened in 60 cases. Twenty-two of them (37%) reported that they were not present in the conference room. Of the 22, 16 said they had not been informed that they would not be present, and 13 could not say why they had not been present. Asked whether they thought they should have been present, 9 said no and 2 were undecided. The 11 who thought they should have been present stated that the client has a right to be informed, and that the client's presence would facilitate settlement. Clients who were content to remain in the waiting room generally stated that they had confidence in their lawyers' ability to represent their interests.

Of the 67 conferences observed in which clients were not present at the beginning, the suggestion was made by the judge in 14 cases (21%) and by counsel in 10 cases (15%) that clients join the conference. Neither the judge nor counsel made this suggestion in the remaining cases (64%).

It is deemed the responsibility of counsel to prepare the client for the conference. Most of the clients interviewed (65%) reported that their lawyers explained the purpose; 28% said it hadn't been explained; 12% couldn't remember. However, the pre-trial judge often explains the purpose to parties. In 44 first scheduled conferences observed with clients present, the judge commenced the conference by explaining the purpose in 55%, but no explanation was offered in the remaining 45%.

Counsel, on occasion, appeared unprepared for the conference. Indeed several of the lawyers surveyed made this comment and suggested that the court deal more harshly with these counsel. If discoveries and/or valuations of property are found to be necessary, counsel are expected to have them completed in advance of the conference. However, of the 30 cases in which valuations and discoveries were deemed necessary, only 9 (30%) were completed prior to the first conference. Many counsel are, of course, prepared. As estimated 15% of the matters scheduled for pre-trial are settled by counsel before the conference is convened, and in 6 of the cases observed, offers of settlement had been filed prior to the conference.

When clients were present in the conference room, their participation in the discussion was minimal, presumably because they had been advised by their counsel not to speak. Fifty per cent answered the occasional question directed to them by the judge; 40% made comments to, or asked questions of the judge; 35% answered questions posed by their own lawyers, and 20% initiated comments to their lawyers. The parties seldom spoke to one another. Fifty-two per cent of the clients interviewed reported that at times they wanted to say something but felt they couldn't, or they wanted something explained but felt they shouldn't ask.

Some clients (30%) commented favourably on the informality of the conference. It is held in a motions chamber, a room smaller than a court room. In the centre of the room is a table surrounded by chairs, with the judge, who is not gowned, sitting at the head. Chairs also line the perimeter of the room. Although informal in nature, several clients commented that they felt like "observers". In only 13% of the observed

conferences, did the clients sit closest to the judge; in 53% the lawyers sat closest to the judge and in 17% of the cases the parties did not even sit at the table. With the seating arrangements and the lack of participation, it is not surprising that some parties felt like "observers".

The activities performed by the pre-trial judge in the conferences observed are shown below:

<u>Judges' Activities</u>	<u>% of Cases</u>
Propose settlements	57
Provide tentative view of trial outcome	33
Suggest submission of offers	12
Clarify points of law	18
Suggest discoveries	6
Review terms of settlement	3
Suggest wording of settlement	4
Referral for conciliation	2
Order for investigation	7

The judge's activities were often a response to the needs expressed by the lawyers; their activities are listed below:

<u>Lawyers' Activities</u>	<u>% of Cases</u>
Submissions	76
Propose settlement	41
Suggest discoveries	12
Suggest conciliation	2
Suggest investigation	2
Sought judge's help re:	
Settlement	19
Tentative view of trial outcome	8
Wording of settlement	2
Interpret law	6

The judge's major activity is suggesting possible settlement or formulas for settlement and providing his tentative view on a trial outcome. When the

judge fails to initiate these activities, they are requested by counsel.

In attempting to settle cases, the judges often exert pressure on counsel, although we are not suggesting this in any pejorative sense.

The judge usually recesses the conference so that the counsel and their clients may attempt to negotiate a settlement. On average, conferences last about twenty-five minutes, but negotiations outside chambers may take from a half to two hours. The judges may resist issuing a trial date, suggesting an adjournment to continue the pre-trial, or may adjourn the case to a date to be spoken to, in order to provide further opportunity for settlement. As noted previously, some lawyers object to the scheduling of a second pre-trial; whether it helps to facilitate a settlement will be examined in the next section.

Although the conciliator did not participate in any conferences, she did join the conference in 7 cases to receive and obtain clarification on referrals. While only 9 referrals were made to Conciliation Services at the pre-trial conference, a total of 22 of the 100 cases did use the service at some point during the proceeding.

Results

The outcomes of the 100 cases in the sample are presented in Table 3. Although we do not know whether the findings would have been different without a pre-trial conference, 22 of the 97 disposed cases (23%) went to trial. Seventy-five (77%) are known or assumed to have settled; 38 of these reached full settlement and 8 partial settlement at the pre-trial

conference.

Nearly all (85%) lawyers surveyed believe that the pre-trial conference increases the likelihood of a settlement. Although 62% of the clients interviewed reported that some or all issues were settled at the conference, fewer (39%) rated the pre-trial conference as helpful; 16% were undecided and 45% said it was not helpful. We speculate that the conference may have been perceived as unhelpful by some because many of the parties did not participate in, or feel that they participated in negotiating their settlement, i.e., they did not have a sense of "ownership" of the settlement. Forty-two per cent reported feeling pressured into accepting the settlement, most often by their own lawyers.

A high proportion of the lawyers (80%) reported that the pre-trial conference results in an earlier settlement than might otherwise occur.

On the question of whether the pre-trial conference reduces the length of subsequent trial time, most (64%) of the lawyers surveyed said "yes"; 14% said "no" and 22% were "undecided". However, no differences in trial time were found when civil actions tried at the Unified Family Court were compared with family civil actions tried in the Hamilton courts prior to unification. No comparative data are obtained from the Waterloo Courts since pre-trial conferences are also used in those courts.

It has been suggested that by narrowing and defining the issues for trial, counsel and the judge can more accurately predict the time required for trial, thus permitting more efficient scheduling of trial time. Of 20 tried

cases in our sample, 3 used a total of one and a half trial days less than predicted at the pre-trial conference, 6 used a total of 8 more days, and 11 used the predicted time. In other words, trial time was accurately predicted in half of the cases, in the remaining half it was not.

Pre-trial conferences were expected to reduce the number of cases requiring examination for discovery. Although we cannot be certain that the following result can be attributed solely to the pre-trial conference, we found that fewer contested actions at the Unified Family Court had examinations for discovery when compared to Hamilton cases before unification and cases in the Waterloo court system (23%, 58% and 45% respectively).

It was expected also, that if the conference could be scheduled as soon as possible, a reduction in the number of interlocutory motions would result and so save money for the clients and the court. This does not appear to have occurred. Prior to the Hamilton Unified Family Court, when no known pre-trial conferences were conducted, there were interlocutory motions in approximately 33% of the contested divorce and other civil actions.

Interlocutory motions were used in 42% of the cases in the Unified Family Court pre-trial sample and 77% of these were brought before the first pre-trial conference was convened. It would appear that the pre-trial conferences were not convened soon enough to result in a reduction in interlocutory motions.

When a full settlement is not reached at the pre-trial conference, it may be continued on another day. In the sample of 100, there were 68 cases in which no settlement was reached at the first pre-trial conference. In half

of these cases (34) there was an adjournment for the continuation of the conference, and in the other half a trial date was scheduled and no further conferences held. Nineteen (56%) in the group with one conference only, settled before the trial date. In the group having a second conference, the settlement rate increased to 71%; 24 cases settled, 11 at the second conference and 13 before trial. While this suggests that a second pre-trial conference increases the settlement rate, further research would be necessary to reach this conclusion with confidence, since the cases with a second conference may have differed in some significant way from those with one conference only. In assessing the value of adjourning the pre-trial conference for continuation, possible delay till final disposition should also be considered. The cases with more than one pre-trial conference took significantly longer to conclude than those with only one pre-trial conference (278 days vs 218 days). The longer duration until disposition which occurs when the pre-trial is adjourned for continuation may not be justified by the somewhat higher settlement rate.

It is possible that the presence of the parties in the conference room is related to settlement, since the settlement rate for conferences at which the parties were present for the entire conference was 62%; when the parties were not present, the settlement rate was 38%. Again, it is difficult to interpret these findings with any confidence. However, since the proposed model specified client participation in the conference and since both the lawyers and the clients feel quite strongly about the importance of the parties being present, the court might be advised to have the clients participate.

Summary

The pre-trial conference concept "forms the basis of the philosophy" of the Hamilton Unified Family Court. It is the major legal strategy employed by the court to achieve the primary instrumental objective of settling disputes (to be discussed in Section 2).

From a sample of 100 cases with a least one pre-trial conference, the findings show that in 46 cases, issues in dispute were entirely or partially settled at a pre-trial conference and a further 31 cases eventually settled. Only 23 cases were tried, using a total of 27 days of trial time (an average of 1.2 trial days per case).

The findings from the legal survey and client interviews indicate substantial support for the pre-trial conference concept from members of the Bar and general support from clients. In spite of this support, the implementation of pre-trial conferences at the Unified Family Court differed somewhat from the intended model in ways that might have prevented them from realizing their full potential. These include:

- Although the rules of practice state that the pre-trial process is voluntary, in practice the conferences have become mandatory. Some lawyers believe that the pre-trial conference is not beneficial in certain cases and only acts to prolong the time until conclusion of the case. They suggest that clients and counsel should be able to exercise the option of proceeding

directly to trial.

- Intended to be convened as soon as possible, it was expected that the conference would reduce the number of interlocutory motions. The conference, which was convened on an average of four months after commencement of the action, did not achieve this goal.
- Contrary to the original intent, client participation was minimal. In half of the conferences observed, neither of the parties were present in the conference room. The findings indicate that both lawyers and the parties themselves believe that the parties should be present for at least part of the conference, a conclusion which the judges support after their own period of experimentation.
- When clients were present, they were discouraged from speaking, which some found frustrating -- making them feel that they were observing the decisions rather than participating in them.

II Enforcement Services

Objectives

When attempting to enforce maintenance orders, clients are more likely to experience the effects of fragmented jurisdiction and lack of support services, than at any other stage of the court process. In its paper "Family Law: Enforcement of Maintenance Orders" (1976) the Law Reform Commission of Canada suggested that the establishment of a unified family court "would be the most effective single reform that could be made to ensure the proper and effective enforcement of maintenance orders" (page 30). The consolidation of enforcement techniques such as garnishment, registration of a maintenance order against land, or citation for contempt for non-payment, was achieved by unified jurisdiction in the Unified Family Court and later in the Provincial Family Courts by legislative change (The Family Law Reform Act, 1978). The Unified Family Court also has the jurisdiction to vary or rescind all orders brought before it for enforcement when there has been a change in circumstances.

While the Provincial Family Court cannot vary or rescind the orders of a higher court, it is often requested to enforce those orders. Prior to The Family Law Reform Act, 35% of the orders enforced in the Provincial Family Court in Waterloo were Superior Court orders. However, after introduction of The Family Law Reform Act, we found that 50% of all orders enforced under this Act were made in a Superior Court.

The Commissions reported that attempting to enforce maintenance orders was a frustrating, time-consuming and costly effort for the parties in whose favour the order was made, and the returns often did not justify the effort.

More than unified jurisdiction and a variety enforcement techniques were needed. The Law Reform Commission of Canada also recommended that the court assume greater responsibility in ensuring that obligations arising under maintenance orders are fulfilled through court-initiated enforcement, i.e., automatic enforcement and through provision of support services. In fact, the province of Ontario assumed greater responsibility when it introduced the automatic enforcement programme in most Provincial Family Courts in 1973. Under this programme the court, which receives and disburses moneys paid under court orders, reviews the accounts regularly. When an account is found to be in arrears, a notice is usually sent to the defaulting spouse and if the default is not satisfactorily explained, enforcement proceedings are initiated, the defaulter being required to attend at a hearing to explain the default to a judge. The Unified Family Court proposed to maintain the automatic enforcement programme, adding a second automatic enforcement clerk to handle the projected increase in maintenance orders.

At the Hamilton Unified Family Court, the objectives of the enforcement services are (1) to eliminate or reduce legal costs to the creditor in enforcing an order, and (2) to increase the amount of money recovered on maintenance orders. These objectives were to be accomplished through the use of an automatic enforcement programme, the various enforcement techniques and the support services available at the court and in the community.

Initially, an attempt was made to achieve these objectives without a court proceeding, through the use of a preliminary notice to the defaulter. If the defaulting party responded to the notice, the family record clerk

endeavoured to arrange one of the following:

- A variation proceeding, if there appeared to be a change in circumstance.
- A plan for catching up on arrears.
- Referral to a conciliator regarding an access problem, or a referral for credit counselling.
- Referral to a justice of the peace or duty counsel for contempt proceedings where the other party withheld custody.
- Issuance of notice of default (summons to show cause) to bring

If the defaulting party did not respond to the preliminary notice a notice of default was issued.

Although the automatic enforcement programme is not unique to the Hamilton Unified Family Court, the conceptual model includes this as well as other services, to promote greater responsibility on the part of the court in the enforcement of its orders.

An automatic enforcement programme was already in place when the Unified Family Court project began. A pre-hearing procedure in default matters was instituted six months into the project because judicial "down time" in these matters seemed high and the perceived success of the pre-trial conference at that time encouraged the court to apply a similar procedure to default matters, using the clerk or deputy clerk rather than a judge, to convene the conference. The pre-hearing conference attempts to achieve the objectives noted above without the necessity of a court hearing. Although the role

played by the conference officer is similar to that played by the family records clerk, the point of intervention is different. The family records clerk attempts to resolve the default problem prior to the commencement of a default proceeding, whereas the conference officer intervenes prior to a court hearing; i.e., the conference was intended as an additional diversionary technique.

Structure

Although Rule 21 of The Unified Family Court Act allows the court to designate a person other than a judge to convene a meeting for the purpose of resolving or narrowing issues in dispute, prior to the introduction of The Family Law Reform Act (1978), the pre-hearing conference was generally viewed as an informal activity. Also, it was a voluntary exercise, in that the defaulting party could opt to appear before a judge. Section 28 (1)(b) of The Family Law Reform Act gave the court the authority to require the debtor to submit to an examination as to assets and means. This examination was incorporated into the court process under Rule 94 (1) which reads:

94. (1) an examination as to assets and means under section 28 of The Family Law Reform Act, 1978 shall be conducted before a person designated by a Judge, and the transcript of the examination may be received in evidence at a hearing held by the Court under that section.

Although the objectives of the pre-hearing conference did not change with the addition of Rule 94 (1) it ceased to be a voluntary process. Of course, clients still had the right to appear before a judge. Beginning in January, 1978, these conferences were convened by the clerk and deputy clerk of the court, who are both Justices of the Peace. As the steadily increasing

administrative duties of the clerk of the court left him less time to help the deputy clerk with these conferences, which were scheduled three days per week, a third Justice of the Peace began convening some of the conferences in November, 1979.

The Target Group

In the Hamilton Unified Family Court, approximately 55 orders under The Family Law Reform Act and approximately 50 decrees nisi made per month, include terms of maintenance. Orders can be enforced automatically only if the payments are made into the court. In 75% of the orders under The Family Law Reform Act, the payor is directed to make the payments into court and in 20% of the decrees nisi, payments into court are ordered; otherwise, payments are made directly to the person in whose favour the order is made. However, following an enforcement or variation proceeding, the creditor may request that the payments be made into court, thus making automatic enforcement possible.

An average of 70 new accounts are opened monthly at the Unified Family Court. At the close of the current fiscal year (March 31, 1980) there were 3,019 active accounts. In 60% of these the creditor was receiving government assistance and had assigned the maintenance payment to either the Regional Welfare Office or the Treasurer of Ontario. Since passage of The Family Law Reform Act, the court has issued an average of 82 default notices per month.

Of approximately 145 default conferences scheduled monthly, 45% were adjournments and 55% were first appearances. Of the 145 scheduled, 45 (30%)

were not conferenced either because the arrears were paid, the notice was not served, or the defaulter did not appear.

In a sample of 120 default proceedings commenced under The Family Law Reform Act, it was found that 62% of the defaulters had been summoned to court on at least one previous occasion for default on an order, and 32% of these summons were within the previous six months; i.e., most of the defaulters were repeaters.

Although the automatic enforcement programme attempts to prevent the accumulation of excessive arrears on any one account, Table 4 shows that 20% of the cases were more than \$1,500 in arrears at the time the enforcement proceeding was commenced. However, in many cases, the defaulter cannot be served with a notice and arrears accumulate until he can be served.

Functions

The accounts section of the Unified Family Court, staffed initially by a bookkeeper, assistant bookkeeper, two family records clerks and one automatic enforcement clerk (a second was not hired) receives and disburses moneys paid under court orders, (\$2,398,815.11 for the fiscal year ending March 31, 1979), monitors ledgers, initiates enforcement proceedings and, prior to The Family Law Reform Act, helped clients complete applications to vary.

Approximately ten months after the project began, the accounts section ceased issuing the preliminary notice of arrears to the defaulting party; instead, it issued a notice of default directly. This procedure was not

deemed effective enough to justify use of the court resources needed to maintain it. Unfortunately, data were not available to assess the relative effectiveness of this notice procedure. Court proceedings may still be avoided in cases where the defaulting party contacts the family records clerk handling his account. However, the emphasis has changed somewhat, from one of diversion from a court proceeding whenever possible, to one of diversion from a court hearing following the initiation of a court proceeding.

Another gradual but important change occurred in the service functions. As the number of accounts increased, the regularity with which the clerks could monitor each ledger decreased. Following a staff change in January, 1979, the position of automatic enforcement clerk was eliminated, and automatic enforcement dropped off dramatically. Monitoring of the non-assignment accounts (i.e., those cases in which the creditor receives the money from the court rather than assigning it to a welfare agency) ceased, and for the most part, enforcement proceedings were commenced on request only. The family records clerks continued to monitor and automatically enforce the assigned cases when time permitted. But because this monitoring occurred infrequently, parental support workers from the Ministry of Community and Social Services began to perform this function for those accounts assigned to the Treasurer of Ontario. By May, 1980, the parental support workers had assumed complete responsibility for the automatic enforcement of all Treasury accounts, estimated to be 35% of the total number of court accounts. Two parental support workers are now present at the court on days when pre-hearing conferences are convened. One is available on two other days to monitor ledgers, initiate enforcement proceedings, and interview

clients. Only orders assigned to the Treasurer of Ontario are now enforced automatically.

In a sample of 120 cases scheduled to appear in court, it was found that 83 (69%) cases were conferenced; in the remaining 31% the moneys owing were paid, obviating the need for a conference.

The court records indicate that the parental support worker attended the conference in 16 cases (20%). Like the family records clerks and the conference officers, these workers discuss the situation with both the debtor and creditor (when attending) to assess the problem and to help the debtor plan ways to reduce the arrears, if possible. Although their discussions are conducted in a conciliatory manner, it should be recognized that the parental support worker represents the interests of the Ministry of Community and Social Services, not the creditor, even though both may desire the same result. If the debtor's financial circumstances have changed, this worker will make a referral to the appropriate court service to bring an application to vary.

Although it was intended that referrals would be made to the Conciliation Services in cases where an access problem was identified, none of the 83 conferenced cases was referred to a conciliator. There are several possible explanations for this: the conference officer is not suggesting use of this service, the parties are refusing to use this service, or, access problems are not identified in these matters. But since these conferences were not observed, we do not know the true explanation.

Sixty-two of the 83 cases were adjourned in order to:

- review debtor's compliance with undertaking	26
- review debtor's financial situation	9
- bring an application to vary	19
- other	8

Although 29 of the conferenced cases (35%) eventually went before a judge, (15 to be heard with an application to vary, 2 to be heard with a divorce petition, and the remaining 12 because the debtor failed to show cause or undertake to reduce the arrears) 54 (65%) were resolved without a court hearing.

Other than the use of a hearing, the various enforcement remedies provided under The Unified Family Court Act and The Family Law Reform Act were not used extensively in this sample. Wage attachment was ordered in 5 cases and 2 writs of execution were issued. One debtor was committed to jail. Even when 54 of these debtors defaulted a second or more time these remedies were not used extensively. There were 4 attachment orders, one garnishee, one execution and 2 committals. One of the judges reported that executions are used infrequently because they are expensive and time consuming and garnishment, under The Unified Family Court Act, is a "one-shot" remedy, described by the judge as "virtually worthless, in law".

Results

Of all the family proceedings conducted at the Hamilton Unified Family

Court, clients seemed most dissatisfied with the handling of enforcement matters, and expressed their frustration at the court's inability to enforce its orders. Several clients complained that although they had been told their orders would be automatically enforced, this was not the case.

The lawyers surveyed also expressed some frustration in attempting to enforce orders for clients. Asked if the rules and procedures of the court "clearly and simply provide the means for enforcing an order", 41% said yes, 36% said no, and 23% had no opinion. Several respondents commented that the rules and procedures should be "tougher" to ensure payment. A majority (80%) indicated that the court should enforce all orders automatically, and 68% believe that the court should have a system for tracing missing spouses (as recommended by the Law Reform Commission of Canada). Almost half (46%) of the lawyers rated the court's enforcement services as inadequate, 30% rated them as adequate, and 24% had no opinion.

Forty-nine per cent of the lawyers surveyed reported that default proceedings were handled expeditiously by the court; 27% reported they were not. Several commented that adjournments merely delay the resolution. It should be noted however, that the adjournment is the conference officer's prime "tool". It is used to monitor compliance with an undertaking and review the financial situation of a debtor unable to pay at a later date. As reported above, it appears to have been effective, most of the cases were resolved at the pre-hearing stage.

Asked if the court's system of handling default proceedings ensures protection of the legal rights and interests of clients, 43% of the lawyers

responded yes, 31% said no, and 26% had no opinion. Ten per cent stated that all enforcement proceedings should go before a judge, because only a judge has the power and authority needed to ensure enforcement. Others (15%) indicated that these matters could go before a quasi-judicial officer if that officer had legal training, or if the officer had more power (5%), or if a judge were always available (8%) if needed.

Following up on the sample of default cases, it was found that 21 of the 36 debtors (58%) who undertook to reduce the arrears did in fact do so; 18 after a pre-hearing conference and 3 (of the 6) who appeared before a judge. However, of the 106 cases in which the payor was expected to be making payments on the order, subsequent enforcement proceedings were commenced in 51% of the cases. At the end of the follow-up period, which varied in length from one to twenty-two months, the ledgers of 94 active cases showed the following:

- No arrears	18 cases
- Arrears decreasing	19 cases
- Arrears remaining constant	5 cases
- Arrears increasing	52 cases

At the time the ledgers were checked, the most recent payment into court had been made:

- Within the month	50 cases
- 1 to 3 months prior	8 cases
- 4 to 6 months prior	8 cases

- 6 to 12 months prior	11 cases
- more than one year prior	13 cases

So while arrears were increasing in 55% of the cases, recent payments (within the month) had been made in 55% of the cases.

In 30% of the cases in which arrears accrue on a maintenance order, a default notice is sufficient to secure payment. When a pre-hearing conference is required, the findings suggest that the conference saves judicial time; only 35% of the cases went before a judge, and half of these because the enforcement was consolidated with a motion to vary or on the basis of some other proceeding which only a judge can hear. Although we are unable to comment on the relative effectiveness of the enforcement services and processes in recovering money owed on maintenance orders in relation to their administrative costs, statistics from the Ministry of the Attorney General (Court Statistics Annual Report) indicate that the collection rate in Hamilton-Wentworth is better than in most other Provincial Family Courts.

As well as lawyers and clients, the Unified Family Court judges have expressed their concern about the area of enforcement. One judge believes that the existing enforcement procedures are not efficient. He recommends new legislation to create a "perpetual garnishment" process (currently used in Saskatchewan and Quebec) commenced by the creditor on an ex parte application. This process is proposed as a method of reducing costs for clients and the court. The evaluation of the Saskatchewan Unified Family Court may shed light on the efficiency and effectiveness of this procedure.

Summary

The enforcement of maintenance orders is one of the most difficult issues faced by family courts. The Unified Family Court hoped to promote effective handling of enforcement matters through the use of an automatic enforcement programme, additional enforcement techniques and the various support services available at the court and in the community. In spite of the court's efforts, clients reported considerable frustration and dissatisfaction, a response that would likely be obtained throughout the province. The judges also are concerned and feel that changes are required.

The enforcement service model changed over the course of the project primarily in an effort to make more efficient use of the available resources:

- The automatic enforcement programme, in which the court assumes responsibility for enforcement, has been significantly reduced. Both clients and lawyers believe the court should offer this service. (Assessing the effectiveness of the Hamilton project with the provincial automatic enforcement programme, is beyond the scope of the present study.)
- Staff resources were reduced, rather than increased, as initially proposed. Almost half of the lawyers (46%) rated the court's enforcement services as inadequate. However, there appears to have been no change in the enforcement rate.
- With elimination of the preliminary notice to defaulters and the introduction of the pre-hearing conference, the use of resources in this area shifted from the pre-court (i.e., prior

to commencement of a proceeding) to the pre-hearing stage. The emphasis, though, remains on diversion from a hearing, primarily to promote more efficient use of judicial time. And while the pre-hearing conference did reduce the number of cases requiring judicial intervention, the procedure was a matter of concern to some lawyers and clients.

- The social services were used infrequently in these matters, suggesting either inaccessibility of these services to clients, or less than expected need for these services.

Although the enforcement rate at the Hamilton court continues to be better than in most Provincial Family Courts in Ontario, the court believes that more efficient and effective means for enforcing an order should be sought. Such an effort should be a joint Court-Ministry endeavour.

III Conciliation Services⁽⁹⁾

"Conciliation Services" is an umbrella term used to refer to certain social and health services available to spouses, parents and children, at or through the Hamilton Unified Family Court. This group of services, also referred to as the "social arm" of the court includes information, counselling, conciliation and investigation. Services for children in need of protection and juveniles, although available through the court, are not provided by the Conciliation Services which focuses exclusively on matrimonial matters.

Both Law Reform Commissions agreed on the importance of the Family Court's therapeutic function. In fact, the federal Commissioners stated that:

It is this service function, not the judicial function that will be the primary contribution of the Unified Family Court, enabling it to provide viable alternatives to reliance on judicial solutions for family difficulties. (Law Reform Commission of Canada, 1976, page 9.)

The model of Conciliation Services proposed for the Hamilton Unified Family Court, as described in the 1977 Submission of the Ministry of the Attorney General, placed a strong emphasis on diversion. That is, conciliation and counselling would offer clients a voluntary alternative to the traditional adversary process. These services were to be available to clients at all stages of the court process, but particularly at the pre and post court stages.

Objectives

As with other strategies or services at the court, the Conciliation Services were instituted to help the court achieve its objectives. Viewed in this way, the social arm was seen as an equal to the legal arm of the court. These services are obviously quite different from those of the legal arm; maintaining the distinction between the two arms was considered to be very important. First and foremost, the court was to remain a court of law.

The social arm was expected to:

- Inform families of the various alternatives available to them in the resolution of their problems.
- Facilitate reconciliation when considered possible and desirable.
- Help spouses resolve custody, access, support and minor property disputes.
- Assist spouses, parents and children resolve emotional, social and practical problems contributing to or arising from marriage breakdown, by referring them to the appropriate community agencies.
- Provide the court, when ordered, with information to assist it in making decisions in the best interests of children in those cases where prior settlement of custody and access is not possible.

Although these objectives were developed by the judges and conciliators, differences of opinion developed regarding the priority given to each objective. Having an investigator provide facts and expert opinion in matters relating to children at trial is of considerable importance to the

court. But using the conciliation process to help families arrive at decisions that are best for the children, is viewed by the conciliators as a most important goal. Differences in goal priorities are neither unexpected nor incompatible, although they can influence both the process and the outcome for clients.

Structure

Section 17(2) of The Unified Family Court Act, 1976 states that:

A conciliation service may be established, maintained and operated as part of the Court.

Although the Law Reform Commission of Canada suggested that the rules of procedure should be designed to encourage recourse to counselling services, conciliation was not incorporated as part of the court process through the rules of practice and procedure. Rule 20 of The Unified Family Court Act, though, does provide the judge with the opportunity to determine whether the parties have used or would be interested in using the conciliation services.

It reads as follows:

As soon as reasonably possible after the commencement of a proceeding, the presiding judge shall enquire whether or not attempts have been made to resolve or narrow the issues in dispute, which issues have been resolved or narrowed and whether settlement by the parties of the issues remaining in dispute is likely.

Unlike conciliation, however, the investigative process is incorporated into the court process by the following Rules:

53. The Court may order a person or agency, with the consent of the person or agency, to make an investigation related to a proceeding in which support or custody of or access to a child is in issue, may order a party or parties to pay the costs of the investigation and may receive evidence resulting from the investigation.

54. The person or agency making an investigation under Rule 53 shall file a report of the investigation and the report shall be served on all parties before the hearing.
55. A party may summon a witness and cross-examine a person who made an investigation under Rule 53 and may give evidence in reply.

Although almost all referrals for investigation of a custody or access dispute have been made under Rule 53, in several cases judges have directed a reference under Rule 27 which reads in part:

27. (1) Where the Court directs a reference, the Court shall give such directions for the conduct of the reference as the Court considers necessary.
- (2) The Officer of the Court to whom a reference is directed shall convene a hearing of the reference, may cause witnesses to be summoned and examined under oath and may determine what documents are to be produced on the hearing of the reference.
- (3) The Officer of the Court who conducts a reference shall make and file a report on the reference and the report shall be served on the parties.

In the few custody and/or access cases in which the court directed a reference, the reference was conducted by a conciliator or the deputy clerk of the court. Although investigations of custody or access disputes were not intended to be conducted under Rule 27, nor was it intended that the clerk or deputy clerk investigate these matters, one judge believes there are certain access cases in which a reference conducted by a deputy clerk is appropriate and efficient.

Although under Rule 53 the judge may order an investigation related to a

proceeding in which support of a child is in issue, this has not yet been done. However, the clerk and deputy clerk have conducted references under Rule 27 in such cases. In fact, the function of almost 50% of all references has been to determine and recommend an equitable quantum. It would appear that no clear guidelines were established as to when and in what types of cases references should be conducted. Several lawyers stated that the rules with respect to references are unclear and that judges generally do not give specific direction. Although 12% of the lawyers surveyed believe that custody and access are appropriate issues for a reference, 31% thought they should be directed in matters respecting division of assets, 18% in maintenance matters. The lawyers thought they should be used in matters of "detail" or "accounting", but never where substantial issues must be decided. They stated that a variety of professionals in the community could be used to conduct references, depending on the nature of the case. Clarification on the use of a reference would be beneficial.

The Hamilton Unified Family Court commenced operations with one conciliator, a former welfare worker on loan from the municipal welfare department. As planned, a second conciliator, a former psychiatric nurse with family therapy experience, was hired two months later. The first conciliator resigned after twenty-one months when it became apparent that he lacked the required expertise. Unfortunately, a replacement was not secured for seven months, leaving the one conciliator to carry the entire load. In October, 1979, the replacement, a qualified social worker, was hired.

Neither of the conciliators is responsible for administrative supervision of

the Conciliation Service; this role being assigned to the clerk of the court. Ultimate authority, though is with the judiciary. The clerk is expected to supervise day-to-day issues while the "liaison" judge is responsible for matters of general policy. Although the proposal called for a Resource Committee, composed of representatives from various community agencies, "to co-ordinate relations between the court and the outside services", this committee did not meet until ten months into the project. At this time, the judge and the conciliation officers brought representatives from community agencies together primarily for the purpose of forming an ad hoc committee to explore fundamental issues of the Conciliation Service, and to formulate its philosophy and policy. This ad hoc committee drew up a set of policy guidelines and established a Conciliation Advisory Committee to the court. Later, another ad hoc committee was formed to consider policy and practice in the area of investigative services -- initially thought to be outside the mandate of the Conciliation Advisory Committee.

The Conciliation Advisory Committee is responsible to the judiciary and initially, had no policy or decision-making mandate. In our March, 1980 Report we indicated that Advisory Committee members reported some confusion regarding their mandate. Although there was no consensus as to the degree of influence or authority the committee should have, its real lack of authority may well have contributed to the "social arm" viewing its status as unequal to that of the legal arm.

Our March report described how the role of administration in the Conciliation Service was unclear to administrators as well as to the

top priority.

The Target Group

As noted previously, the original model proposed that conciliation services be available to all clients seeking assistance through the court, particularly to those at the pre and post-court stages.

Although legislative changes in The Family Law Reform Act, (1978) have no doubt reduced the number of "off-the-street" clients (the information procedure having been replaced by an application procedure) since the project began, we estimate that approximately 100 people per month still seek information and advice from the court regarding matrimonial problems. In addition, approximately 325 proceedings regarding matrimonial matters are commenced monthly at the court. Consequently, this produces a monthly client population of about 425 cases, although not all would necessarily benefit from, or be interested in the Conciliation Services.

As reported in March, 1980, from the beginning of the project until the end of September, 1979, there were 1,020 referrals to the Conciliation Services, or approximately 38 per month. (The average number of referrals has recently increased to more than 50 per month.) The first two conciliators became quite specialized in terms of the services that each provided. One conciliator received most (79%) of her referrals from the court (judges, J.P.s) or from lawyers, most of which (80%) dealt with custody and access; the other conciliator received referrals mainly (66%) from community agencies or the clients themselves, either for information (35%) or assistance in reaching a settlement of a maintenance issue (52%). The new

conciliators.

But, improvements have been made since then. The judge, deputy administrator and two conciliators now meet weekly to discuss policy, practice and day-to-day issues. These meetings also provide a forum for the discussion of roles and responsibilities within the service.

The conciliators reported that, although the structure could provide them with administrative support, it was not capable of providing the clinical supervision or consultation they regarded as essential. As reported in March, 1980, conciliators and social service professionals suggested that this assistance might be provided by senior staff in one or more of the community agencies represented on the committee. The conciliators believe that the service continues to suffer without clinical supervision.

The senior (i.e., longest tenured) conciliator, although not given supervisory status, is required to perform a number of administrative tasks, such as organizing meetings with social and legal professionals in the community, preparing memoranda and reporting forms, etc. She also supervises social work students. Since this conciliator has been expected to maintain a full clinical case-load, the service has suffered from these additional demands, which are compounded by inadequate secretarial assistance.

Several months ago, at the suggestion of the judge, the Advisory Committee assumed the role of a Standards Committee and recently, the question of the Committee's mandate arose again -- a subject which members agreed to give

conciliator accepts the same types of referrals as his predecessor, in spite of the fact that he had no previous experience nor was he given training in financial conciliation. But unlike his predecessor, he also receives referrals from lawyers and the court with respect to custody and access disputes.

The clients referred to Conciliation Services represented 20% - 25% of the pre and post-court clients and less than 10% of the clients involved in a court proceeding. Interviews with 113 clients not referred to Conciliation Services revealed that 83% did not know about the service and 40% of them said they would have used the service had they known about it. It would therefore appear that the service has not been accessible largely because it was unknown. In addition, a survey revealed that in spite of the court's efforts, a majority of lawyers were not well informed about the service which also probably influenced its use.

Since submission of the Conciliation Services Report there have been changes in the client group served. Because of heavy case-loads and the growing demand for service to clients engaged in a court proceeding, the conciliators now seldom accept a self-referral. Referrals must be made by the court, the parties' lawyers, or by a community agency. Clients coming to the court for assistance may be directed to the "intake" worker, a social work student who serves clients seeking information regarding separation, custody, access, support, etc. Clients requesting legal advice are referred directly to the duty counsel. Those wishing to lay a charge are referred to a J.P., and those reporting non-compliance of a court order are referred either to a J.P. or an accounts clerk.

Functions

Information. In the Conciliation Report we noted that the provision of general information was the only service given to approximately 35% of the clients seen by one conciliator, although not all the information-seekers were seen by a conciliator. The receptionist "screens" the clients and refers them to one of the several court services. When the new conciliator joined the project he assumed this information-giving role, providing information to approximately 20 clients (40% of his referrals) per month. Half of these were "walk-in" and the other half were "phone-in", clients. He noted a need for an information service at the court, as did many of the clients interviewed, and found that he was not always able to spend enough time to properly assess the clients' problems. He also noted that many clients might benefit from counselling but again did not have sufficient time to conduct an adequate assessment and make the appropriate referral.

In January, 1980, the Conciliation Services provided a four-month field placement for a social work student. The student's interest in learning to conduct intake interviews made it possible to provide the service which the conciliator had indicated was needed. The student spent two months observing conciliation interviews and learning about the functioning of the court. She then began to help clients who were seeking information regarding custody, access and maintenance. The court intends to continue this service using social work students, each present at the court for a four-month placement period. Although this service has been labelled "intake", in fact it is not. Not all clients coming to the court for information and assistance are referred to the student-worker and the student-worker in turn

does not refer clients to the conciliators. The student either provides the requested service herself, or refers the clients to an in-court service (such as duty counsel, a Justice of the Peace, or an accounts clerk) or to a community agency.

Based on the apparent lack of accessibility of the Conciliation Services to many court clients, the need identified by clients for such a service, the lack of a systematic referral service and the consequent under-utilization of the community counselling services, together with the results of the Frontenac Family Referral Service (1979) indicating that conciliation and counselling are most effective at the early stage, we recommend that the court acquire a skilled intake worker. Monitoring the present student staffed service would help to determine the kinds of client needs that can be met using this resource. But we suggest that the service currently offered is not a substitute for an experienced, full-time intake worker.

Conciliation. Conciliation at the Unified Family Court, as defined in the Hamilton-Wentworth Unified Family Court Conciliation Policy Guidelines, is:

a voluntary alternative to the traditional court process, facilitating dispute resolution in family matters by short-term crisis intervention.

The communication between clients and conciliator is privileged and may be reported to the court only with the consent of both parties. In the conciliation process, an attempt may be made to explore the possibility of reconciliation, perhaps resulting in a counselling referral to a community agency. If reconciliation is neither possible nor desirable, the conciliator helps the parties reach a settlement of the issues in dispute

including support, custody, access and property. If criminal behaviour has precipitated the court action, the conciliator might suggest a peacebond or counselling and may also conciliate the corollary relief issues mentioned above.

In March, 1980, we reported that referrals for conciliation accounted for approximately 70% of all referrals to the Conciliation Services, since then, that proportion has dropped to 45%. Fifty per cent of the referrals were for conciliation of a maintenance matter; these cases now account for 60% of the conciliation referrals. In these matters there is rarely a dispute over entitlement -- the parties are seeking assistance in arriving at an equitable quantum. Most of the remaining referrals were for conciliation of a custody or access dispute, a few for reconciliation or for a criminal offence.

We reported previously that the conciliators conducted an average of 1.2 interviews per maintenance case, and 2.2 interviews per custody/access case. These statistics have not changed over the last six months. Maintenance cases averaged just under an hour of interview time per case, custody/access cases required 2.8 hours. Although the conciliators have cut back on the number of referrals accepted (from 30 to 20 per month) in order to have more interview time per case, we found no changes in the average interview time per conciliation case.

Referrals for Counselling. In the Hamilton model, all counselling is provided by other agencies (Appendix B) in the community. With few exceptions, all referrals for counselling are made by the Conciliation

Services. The pre-hearing conference officers occasionally refer defaulting spouses for budget counselling, and judges, J.P.s, the receptionist as well as the conciliators, refer clients directly to an Addiction Research Foundation worker who is present at the court two days per week. We reported an average of 6 referrals per month to the various agencies for counselling, for the first two years of the project. The agencies felt then, that their counselling services were being under-utilized. During the last six months the conciliators have referred an average of only 4 cases per month for counselling, though the number from all court sources may be somewhat greater. This drop is not surprising, since the conciliators are now accepting fewer referrals, particularly from self-referred clients who may be most likely to accept and benefit from counselling. Whether there should be more referrals from the court to community agencies for counselling is unknown. This question could be answered only when the conciliators are assured of sufficient time to make adequate assessments and referrals.

Pamphlets informing clients of the available services were in the draft stage at the time of the March 1980 report and are now printed. But they are not being widely distributed, because the Conciliation Services are now unavailable to self-referred clients.

Investigation. The model of investigation services has undergone significant change since the beginning of the project. Very few referrals for investigation were made to Conciliation Services during the first few months, but after six months the orders for investigation increased and the

referrals for voluntary conciliation of custody/access disputes from court began to decrease. Although it was impossible at the outset to determine the proportion of cases requiring investigation, the increased demands for investigation on Conciliation Services represented a deviation from the proposed model, and led to the development of a number of problems, including:

Role conflict. Conflict was created for the conciliator when she was requested to investigate cases which she had previously conciliated. The Bar was confused when the conciliator attempted to negotiate settlements, consistent with her professional training and the philosophy of the court, within investigation; lawyers thought the investigator's role was simply to gather evidence and make recommendations to court.

Service priority and time consumed. Investigation takes twice as much time per case as conciliation. As investigation became the priority service, less time was left for conciliation.

Case backlog. A backlog of cases for investigation began to develop and the conciliators, lawyers and clients felt that direct service time devoted to each case was inadequate.

Complexity of cases. Some cases were complex, requiring a multi-disciplinary approach which the court service alone could not provide.

An ad hoc committee was formed to resolve these problems and develop new policy and procedure for investigations. While resolutions were being sought, the conciliators attempted to refer as many investigations as possible to various community agencies. In March, 1980 a new investigation policy and procedure was ratified by the committee and presented in a memorandum to the Bar.

Eight community agencies have tentatively agreed to conduct investigations for the court, with the condition that they will reject any particular referrals deemed not to comply with the agencies' referral criteria. The conciliation process, renamed "mediation" has been formally incorporated into the investigative process, renamed "assessment", to be conducted by one of the court conciliators. All communications between clients and conciliator at this mediation stage are confidential. If an agreement is reached, an agreed upon statement of facts and the agreement are to be recorded in a report submitted to the court. If there is no agreement, the assessment will be carried out by one of the 8 community agencies selected by the conciliator or by professionals proposed by the parties. When an assessment is conducted by one of the designated agencies, the parties will pay a standard fee of \$200. While agreeing to accept this approach, all agencies indicated that the fee would not cover the entire cost of conducting an assessment.

The divergent approaches taken by different judges with respect to the utilization of conciliation versus investigation, and the confusion this created for members of the Bar, resulted in the formulation of a general policy of ordering assessments (investigations) rather than referring cases

for conciliation. Although it will be some time before the effectiveness of this new procedure can be determined, preliminary data shed some light on the process to date.

From the first of January until the end of May, 1980, the court has ordered 38 investigations, an average of 8 per month. In some cases lawyers, perhaps because their clients do not want to pay the costs of an investigation, have requested the judge direct "voluntary mediation" -- 16 cases until the end of May, 1980. Voluntary mediation differs from conciliation and is similar to assessment in that there must be a court action in existence; the action must pertain to a custody, child maintenance, or access dispute; and the referral is made by the judge. However, like conciliation, all communications are confidential. If the dispute is not settled in voluntary mediation (the facts still in dispute are conveyed to the court by the conciliator), the judge may order an investigation.

During this same period, 26 referrals (4 per month) were made for conciliation of a custody/access dispute by some source other than the court, e.g., lawyers, community agencies.

Although there has been an increase in the number of investigations ordered per month, there has been no decrease in the total amount of conciliator's time per case -- probably because of the cutback on other types of referrals and the availability of a second conciliator to conduct investigations. However, the proportion of direct to indirect service time per case has

changed. The number of interviews per case has decreased from 3.9 to 2.8, and the average interview time per case has decreased from 4.6 hours to 4 hours. However, the indirect service time per case -- which includes reports to court, consultations with lawyers and consultations with agencies -- has increased. The conciliators now spend as much time per investigation as before the new procedure, but less in direct service time, i.e., time with clients.

At the time of writing this report, not all of the investigations referred since January, 1980, had been completed. Two of them (to determine the child's wishes) were conducted by the conciliator and 11 had been referred to 4 different community agencies, one of which refused to conduct the investigation.

Results

The March report on Conciliation Services presented findings derived from a sample of 427 cases referred to the Conciliation Services between September, 1977 and September, 1979. How these findings relate to the functions of the service is presented below.

Information for Families. As noted earlier, the court does not have an intake service, although it was included in the proposed model. Clients seeking information may be referred by the receptionist to the duty counsel, a Justice of the Peace, an accounts clerk, or a conciliator -- or a social work student (as of March, 1980) -- depending on how the client states his problem. We would expect the outcomes of these "intake" interviews to vary, depending on who conducted the interview; i.e., we would expect that the

duty counsel, Justice of the Peace and accounts clerk would usually recommend legal alternatives, and the conciliator would recommend social alternatives. Contrary to our expectations, we found that the conciliator who conducted all the "intake" interviews for the Conciliation Services, suggested the use of a "social" resource in only 14% of his cases. The majority (60%) were referred to lawyers, with another 12% referred to a J.P. to lay a charge. These results were similar to "intake" interviews conducted by a J.P. Although these outcomes may reflect the actual needs of the clients, an alternative hypothesis is that they can be explained, in part, by the conciliator's background. This particular conciliator, a former court welfare worker with no formal training or experience in family counselling or related areas, was more familiar with, and thus more likely to use, legal rather than social resources. Unfortunately, sufficient data are not available for assessing the use of social work students in conducting these interviews.

Trained social-service professionals, both at court and in the community, reported that they believe clients are likely to be more receptive to counselling when offered at the earliest opportunity, before deciding to resort to the court. Even though many of the clients interviewed thought that the court should offer conciliation services, and said that had they known about these services they would have used them, nevertheless, some who seek a legal resolution are resistant initially to trying a social alternative. It requires a skilled professional -- and one with sufficient time -- to penetrate this resistance and help these clients consider non-legal alternatives.

Reconciliation. The Conciliation Service is the only court service that tries to help couples to reconcile -- one of the objectives of the Unified Family Court. However, it seems that reconciliation does not have high priority, with either Conciliation Services or the court -- a topic to be discussed further in Section 2 of this Chapter.

A policy and guideline paper produced by the Conciliation Advisory Committee, states that the Hamilton service "does not place a particular emphasis on reconciliation". Only 4% of cases referred to Conciliation Services were referred to discuss the possibility of reconciliation. Conciliation Services gives priority to clients whose dispute is already before the court, thereby making service less available to those at early stages of marital conflict, when reconciliation might still be possible. Interviews with clients who had concluded an action at the Unified Family Court revealed that 69% had at some time actually attempted reconciliation or had discussed the possibility with their spouses. Many of these reported that by the time of the court action they were past the stage of possible reconciliation, though of course, this should not preclude the court from investigating the possibility. It is not surprising then, that only 2% of the referrals to Conciliation Services resulted in an agreement to attempt reconciliation. The findings indicate though, that the Conciliation Service is not operating in a manner that is likely to achieve this stated objective.

Resolution of Disputes. The conciliation process involves identifying the issues in dispute, discussion of alternative ways of resolving these issues, and finally, achieving a mutually satisfactory resolution, expressed

verbally or in a written settlement. The conciliation process can be used at any stage in the court process. All agreements must be approved by the parties' lawyers when applicable. The agreement may be to secure counselling and/or arrange for settlement of issues such as maintenance, custody, access, or to cease assaultive, threatening or harrassing behaviour according to some specified terms.

The results from 262 cases referred for conciliation are presented in Table 5. Reported according to the reason for referral, the results indicate an overall agreement rate of 69%, although this settlement rate is inflated somewhat by the "minutes of settlement" figures. It should be recalled that often there is little or no dispute in these maintenance matters; the parties simply wish, or feel compelled by the welfare department, to have a written settlement go before the court according to previously agreed upon terms. We noted in our March report that some clients receiving government assistance reported that the conciliator's purpose was "to get money for welfare". (These comments were made about one conciliator who was on loan from the welfare department and is no longer with the project.) However, the conciliator should not only be neutral, but be perceived as neutral; i.e., the parties should feel that the conciliator is serving the interests of the family rather than the interests of one of society's institutions. This, and the finding reported in the reconciliation section highlights the importance of selecting personnel with appropriate experience and orientation; the services provided may be determined more by the particular characteristics of the provider than by the stated intent of the service.

Although an average of 23 clients charged their spouses with a criminal

offence each month (assault, threatening, harrassment), no more than one of these cases was referred to the Conciliation Services each month. There appears to be no consistent judicial philosophy on the use of the conciliation process with respect to criminal offences. One judge stated that he regards this as an area in which conciliation can be most helpful, reporting that it often eliminates the need for trial, whereas another judge thinks it is important to try criminal cases. Our March report commented that in spite of the fact that conciliation is defined as "crisis intervention", criminal offences are one type of crisis that receive virtually no assistance from Conciliation Services.(10) Since these data were collected, there have been no referrals to conciliation for assistance in dealing with assaultive, threatening or harrassing behaviour.

As noted previously, the conciliation process may also be used in cases referred for investigation. Of 59 cases referred to Conciliation Services for investigation, 11 (19%) reached an agreement using a conciliation or mediation process. Although the recently initiated investigation procedures may possibly increase the settlement rate at the mediation stage (by reducing confusion and misunderstanding for the Bar, the clients and the investigators) the procedure had not been in effect long enough at the time of writing, to draw any conclusions.

Counselling. One function of the conciliator is to refer clients to community agencies for counselling. Of the 15 cases in the conciliation sample referred to a conciliator for this purpose, 13 were referred to an agency. As noted, there was an average of 6 referrals per month, although recently this has dropped to 4. Several agencies reported that they

believed their counselling services were under-utilized by the court.

Information from the 50 follow-up forms returned by the agencies to which court clients were referred, indicates that 39 clients (78%) were seen at one or other community agency. Since many follow-up forms were not returned -- possibly because the client did not attend at the agency -- we speculate that the real attendance rate is somewhat lower than this. The agencies reported that most (93%) of the referrals were appropriate. Assessing the effectiveness of the counselling services, though, is outside the scope of this study.

Information for the Court. In 32 sample cases in which a report was submitted to court, the investigator's recommendations were used by the parties to reach an agreement in 16 cases; in one other case an agreement contrary to the recommendation was reached. Although the court expects the investigation report to present facts, to express a professional opinion regarding each parent's ability to meet the child's needs and to make recommendations, 10 of the 32 reports contained no opinions or recommendations. This may be due partly to role conflict experienced by the conciliator in conducting investigations, and partly to the lack of standards -- clinical and reporting -- with respect to investigations. The new investigation procedures may reduce this conflict for the conciliator. With respect to the second problem, a conference is planned for November, 1980 to discuss assessment services and related issues, including standards.

It should be noted that not all the problems have been resolved by this new procedure. Some agencies are uncomfortable with the role of investigator;

others feel that the \$200 fee may not cover their costs in providing this service. Since the court believes that matters affecting children must be dealt with expeditiously, it is imperative that continuing efforts be made to improve the effective delivery of these services.

Effect on the Court Process. Like other court services and strategies, the main purpose of Conciliation Services is to help families reach a settlement of the issues in dispute. As noted, a court action is in dispute at the time of referral to the Conciliation Services in most cases. In these, it is hoped that the conciliation process will eliminate the need for a trial, or alternatively, reduce the trial time. The findings indicate that 18% of cases referred for conciliation went to trial, compared to 21% referred for investigation. As expected, cases which reached a settlement within conciliation were less likely to go to trial than those which did not reach agreement. Although no statistics are available, it is logical to assume that the settlement of 69% translates into a saving in court time -- a conclusion supported by judges, administrators and lawyers.

Clients believe there is a need for Conciliation Services in the court, whether they had used the services or not. Seventy-eight per cent of the clients interviewed had not used the service, although 40% of these stated that they would have used the service had they known about it; even some of those who said they would not have used the service stated that it should be available to those who need it.

Although many users of the Conciliation Services believe these services should be provided, they were not unanimous in their appraisal of the

services they had received. Only 7 of 30 users rated the conciliator as "helpful"; 15 as "not helpful". Half the clients reported that the conciliator "did not understand" the family's situation. However, more than half of the conciliation clients said they would return to talk to the conciliator again if other problems arose.

Some of the dissatisfaction may be explained by confusion among clients regarding the nature of the service provided, eg., the purpose, the voluntary vs mandatory aspect. Given the confusion reported by lawyers, in spite of their support for these services, it is not surprising that clients might also feel confused. The interview time per case, deemed insufficient by conciliators, clients and lawyers, also contributed to the dissatisfaction reported by some clients.

Summary

Conciliation Services had more difficulty translating the conceptual model into an effectively functioning operating model than any other court service or strategy, due to the following:

- The actual needs of the Unified Family Court and the families it serves were unknown and difficult to predict with respect to social services at the outset.
- The model was developed primarily by judges and lawyers; the model would have benefitted from greater input from social service professionals in the community providing service to family court clients.
- The kinds of social services and the roles to be played by the

service providers -- both in the court and in the community -- were not clearly articulated from the outset.

We expect programmes, particularly pilot projects to change as they attempt to meet the developing or unanticipated needs of the clients. Indeed, this happened at the Unified Family Court as needs, or the problems in meeting those needs, were identified by clients, conciliators, judges and social and legal service professionals.

The shift in the model's emphasis -- from one of voluntary conciliation and counselling, particularly at the pre-court stage, to one of mandatory investigation at the court stage -- although consistent with some of the goals of the court, proved to be problematic, i.e.:

- The voluntary (conciliation) and mandatory (investigation) services did not develop as distinct services, as proposed, confusing clients, the Bar, social service providers, and particularly, the conciliators.
- Due largely to this shift in priorities, the services have not been accessible to all clients.
- Community agencies reported under-utilization of their counselling services by the court and found it difficult to meet the court's increasing requests for investigative services.

Other problems have prevented the service from functioning as effectively as possible, including:

- The organizational structure has not supported the social arm and helped it to integrate with the legal arm, affecting the ability of the court to function effectively as a whole. The roles and responsibilities of court administrators and the Conciliation Advisory Committee were not clear to those involved.
- Some social service professionals perceived the status of the social arm to be less than equal to that of the legal arm, a factor which they believe hindered integration of the two arms.
- Lawyers reported that a lack of information and clear guidelines for using Conciliation Services hampered their integration with legal services.
- Conciliators reported that inadequate orientation and training made it difficult to integrate their services within the court structure.
- The conciliators reported feeling professionally isolated and without any mechanism for obtaining the clinical consultation or supervision necessary to maintain high standards of practice.
- Legal and social service professionals both reported that the service lacked sufficient personnel to serve clients adequately.
- Social service professionals believe that the lack of an intake service has adversely affected the efficiency of the Conciliation Services. (11)

To its credit, the court has attempted to resolve many of these problems:

- In consultation with community agencies, procedures and guidelines have been developed for the use of the voluntary and mandatory services.
- The court now has two qualified social service professionals filling the conciliation positions, permitting consultation on cases and a more equal sharing of the case-load.
- A senior social work student is present at the court in a quasi-intake role, allowing increased accessibility of community social services to court clients.
- The roles and responsibilities of administration with respect to the Conciliation Services are now more clearly defined and the administrators have become more actively involved in the service.
- The Conciliation Advisory Committee (re-named Standards Committee) is currently clarifying its mandate.

In spite of the problems identified, the Conciliation Services have been assessed favourably by the administrators and judges of the court as well as by clients and lawyers. However, it should be recognized that the model evaluated is one that provides service primarily to litigants, rather than to clients at all stages of the court process, as proposed. Further, the services provided were often mandatory rather than voluntary. The participating community agencies were more often requested to conduct assessments (mandatory) than to provide counselling services on a voluntary

basis, as initially proposed. The goal of helping couples to reconcile has assumed low priority, making its attainment unlikely.

IV Legal Services at the Unified Family Court

1) Services for Adults and Juvenile Offenders

Objectives

Legal services for adults and juvenile offenders are provided by a panel of Hamilton lawyers established by the area office of the Ontario Legal Aid Plan, to serve as duty counsel at the Unified Family Court.

The objectives of the duty counsel service at the Unified Family Court are:

- To provide legal advice to those adults and juveniles who may require it and, when deemed necessary, to refer litigants and prospective litigants to the appropriate legal resources in the community, including the private Bar, the Ontario Legal Aid office and the Legal Aid Clinics operated by the Ontario Legal Aid Plan.
- To advise court personnel (Justices of the Peace, conciliators and enforcement clerks) with respect to legal problems arising as they carry out their court functions.

Structure

Under the Legal Aid Regulation (R.R.O. 1970, Reg.557) Section 68, panels of duty counsel may be established by area directors in their areas. Most (70%) of the persons assisted by the duty counsel under the Ontario Legal Aid Plan in the fiscal year 1978-79, had been charged with a criminal offence. The Regulation is specific as to the duties of the duty counsel in these matters:

69. Where a person has been taken into custody or summoned and charged with an offence, he may obtain before any appearance to the charge the assistance of duty counsel who shall,
- (a) advise him of his rights and take such steps as the circumstances require to protect his rights, including representing him on an application for remand or adjournment or for bail or on the entering of a plea of guilty and making representations with respect to sentence where a plea of guilty is entered; and
 - (b) perform such duties in connection with criminal appeals, including the completion of forms 27 and 28 by the appellant, and including applications for bail with respect thereto as the Director may prescribe.

In the Unified Family Court this section would apply to juveniles charged under The Juvenile Delinquents Act, and to adults charged under The Criminal Code with respect to a family offence.

Of the remaining 30% of the cases in which the person assisted by duty counsel is a litigant or potential litigant to a civil action, the Regulation is less specific:

73. An area Director may designate one or more Duty Counsel to assist him in the operation of his office and in carrying out the provisions of the Regulation in civil matters, in addition to the duties prescribed by section 69.

In these matters, the duties performed by duty counsel are at the request of the court and at the discretion of the particular duty counsel.

At the Unified Family Court an office is available off the reception area for the exclusive use of duty counsel. All court personnel are advised to refer clients requesting legal advice to the duty counsel.

Duty counsel are paid an hourly fee, established by the Law Society of Upper Canada and administered by the Ontario Legal Aid Plan. A duty counsel is

available at the Unified Family Court four days per week. For the first two and a half years of the Unified Family Court project, two duty counsel were present two half days per week when juvenile matters were heard, but as of April, 1980, three duty counsel have been present on these days.

The Target Group

The target group consists of all potential litigants who seek legal advice and assistance from the court, all unrepresented litigants who have been charged under The Criminal Code or are parties to quasi-criminal or civil actions, and all unrepresented juveniles charged under The Juvenile Delinquents Act.

We estimate that approximately 250 adult clients and 125 juveniles avail themselves of this service each month. Clients are referred by the receptionist, the Justice of the Peace, the clerk and deputy clerk, conciliators, accounts clerks, court attendants and the judges of the court.

Generally, all unrepresented juveniles are interviewed by a duty counsel, who usually appears with them in court. Court attendants advise unrepresented clients of the service when they "check in" so that they have adequate time to speak to the duty counsel before appearing in court.

Although duty counsel are requested to complete a form for each client interview and indicate the nature of the service provided, they often fail to do so. Consequently, data made available to us by the Hamilton area office of the Ontario Legal Aid Plan regarding the activities of duty counsel at the Unified Family Court are likely incomplete. However, over a

five month period from December, 1978 these data indicate that each duty counsel interviewed on average 3.3 adults per half day (10% of these were telephone interviews) and 5 juveniles per half day.

Functions

Table 6 summarizes the types of service provided to 311 clients during the same five month period and shows that clients were seeking information and advice on a variety of issues; support, custody and court procedure being the most common.

It appears that duty counsel seldom referred clients to other court services; a sample of 590 interviews conducted by J.P.s revealed only 5 referrals from duty counsel, and there were no referrals from duty counsel in the conciliation sample. Conciliators and J.P.s were more likely to refer clients to, rather than receive referrals from, duty counsel.

Although the data from Legal Aid indicated an average of 3.3 client interviews per half day and although this may be an under-estimate, only 14% of the lawyers surveyed reported that they were very busy when acting as domestic duty counsel; 37% reported being moderately busy; 25% occasionally busy; and 24% said they were seldom or never busy.

Duty counsel reported spending more time at the court on juvenile days (three hours per half day), and interviewing more clients (an average of five), in this period. They reported offering juveniles advice about the offence and the plea in 68% of the 139 cases in which information was provided; in 92% of the cases they appeared in court with the juvenile; and

in 8% an application for Legal Aid was completed. Very occasionally, when a juvenile is unrepresented at a trial, the judge may request that duty counsel represent him, although normally, the juvenile is represented by independent counsel.

Results

Although it is the author's observation that court attendants routinely advise unrepresented clients of the availability of the duty counsel service, only 5 of the 14 unrepresented clients we interviewed spoke to duty counsel; 7 said they did not know the service was available, of whom 3 reported they would have spoken to this lawyer had they known. Several clients commented that they didn't think they could speak to this lawyer because they did not qualify for Legal Aid. The duty counsel office has a sign on the door which reads "Legal Aid", which probably explains why some clients thought duty counsel service was not available to them.

Although the service is described in a recently produced pamphlet, as noted earlier, this pamphlet is not being widely distributed.

Apparently court personnel seldom request legal advice for matters related to their court functions. Few lawyers reported that J.P.s and clerks consult them "frequently" when acting as duty counsel (16% and 19% respectively). Sixty per cent of the lawyers reported that conciliators never consult them, perhaps because many of the conciliators' clients are represented by counsel.

Given that efforts have been made to make the service of duty counsel

accessible, and that half of the lawyers reported that they are only "occasionally" or "seldom" busy when acting as domestic duty counsel, we suggest that the court review the use of this service to determine whether it is required four days per week.

Juvenile duty counsel, on the other hand, report being very busy. Twenty-three per cent of the lawyers who have acted as juvenile duty counsel complained that they were not able to spend enough time with each juvenile to adequately prepare the case. This concern may explain in part why 29% of the lawyers said that the presence of duty counsel does not ensure that the legal rights of juveniles are adequately protected. (Since this survey was conducted another duty counsel has been made available on juvenile days.) However, interview time was not the only concern. Several lawyers stated that many duty counsel are not thoroughly familiar with The Juvenile Delinquents Act, that the duty counsel's input at the dispositional stage is often inadequate, and that duty counsel should not be used to represent juveniles at trial. Several thought that only independent counsel should be used, while others suggested that a panel of lawyers with special training in juvenile matters should act as duty counsel in these matters.

2) Services for Children (Juvenile Offenders Excluded)

Objective:

- To provide separate legal representation for a child where the court feels that the rights or interests of that child will be directly or indirectly affected by a court proceeding.

Structure

The appointment of separate legal representation is incorporated

in the rules of the Unified Family Court, which state in part:

35. Where the Court is satisfied that the interests of a minor or person who may be of unsound mind are involved in a proceeding, the Court may give such directions for the representation of the minor or person as the Court considers proper.

In November, 1977, seven Hamilton counsel were named as the Official Guardian's Representatives in Hamilton. These lawyers may be appointed in any protection matter under The Child Welfare Act, or in custody matters under The Family Law Reform Act or The Divorce Act.

Legislative change (Section 20 of The Child Welfare Act, proclaimed in February, 1980) also made it possible for the court to appoint separate legal representation for a child who is a party to a proceeding under Part II of that Act.

Following an order made under Rule 35 of The Unified Family Court Act, one of the panel of seven counsel is contacted to appear at the next court hearing. Under Section 20 of The Child Welfare Act, a completed referral form is sent to the Legal Aid Area Director in Hamilton to appoint a lawyer from a panel of twenty-one specially trained Hamilton lawyers.

The Target Group

By the end of May, 1980, legal representatives had been appointed in 59 cases under Rule 35 of The Unified Family Court Act, and in 11 cases under Section 20 of The Child Welfare Act (Table 7). Appointment of separate legal representation for children has increased steadily over time and has occurred most frequently in contested custody matters under The Family Law

Reform Act and in child protection proceedings.

Functions

The Official Guardian's representative appointed under Rule 35 is given the right to determine the form of intervention in the particular case. He may ask the judge to order an Official Guardian's Report for assessment of the family situation; he may request that the judge order an investigation through the Conciliation Services of the Court (in contested custody or access matters) and he may meet with representatives of the Children's Aid Society, parents, guardians, the child, counsel and others. After investigating the matter, the lawyer is expected to make submissions to the court regarding the necessity of his intervention.

The role played by the lawyer, i.e., whether he acts as advocate in presenting the child's wishes, or whether he acts in what he deems to be the "best interests" of the child, is presumably at his discretion unless the court gives specific directions (eg., in one case the lawyer was to make submissions regarding the "child's preferences").

Results

The court files of 50 cases were checked in order to determine the number of cases in which the Official Guardian's representative actually represented the child.

Although the representative appeared in court on one or more occasions, in 90% of the cases, it was difficult to ascertain whether the lawyer conducted only a preliminary investigation to determine whether representation was

required, or whether in fact, he did act on behalf of the child; therefore the data are not completely reliable.(12) But on the basis of the information available, it appears that the representative acted on the child's behalf in 22 cases (44%) and did not do so in 28 cases (56%). In the 28 cases where there was no intervention, the following reasons were given:

Deemed unnecessary by Official	
Guardian's Representative	3
Action withdrawn	6
Action settled	7
Not indicated	12

By appointing separate legal representation independent of the court, the Hamilton model complies with the model recommended by the Law Reform Commission of Canada. An alternative model suggested, but thought to be less acceptable by the Commissioners, would employ an advocate appointed to the court staff. Lawyers were asked their opinion on the use of a child advocate. Thirty-one (48%) of the 65 respondents were opposed, 20 (31%) were in favour and 14 (21%) had no opinion on this alternative. Those who opposed the child advocate model did so on the grounds that children have the right to obtain independent counsel, and such representation must appear independent of the court to all parties involved. Those who favoured the concept did so because they think a specialist in children's rights and interests is required to provide adequate representation. Several lawyers commented that none of the panel members qualifies as a "specialist".

Asked if the use of Rule 35 satisfactorily assures protection of children's rights, 38 (54%) responded "yes"; 20 (29%) said "no", and 12 (17%) had no opinion. Opposition to the use of the panel of Official Guardian's Representatives (appointed under Rule 35) was on the grounds that children should have the right to select their own counsel. One respondent commented that the Official Guardian's Representatives are "too slow and seldom enlighten the court". Another, supportive of the use of the panel, indicated that Rule 35 is not used often enough and the procedure is "cumbersome". (It should be noted that this survey was conducted prior to the proclamation of Section 20 of The Child Welfare Act, although Section 20 was anticipated and we assume that many of the lawyers were familiar with it.)

Whether there were children who required separate legal representation but were not offered this service, is unknown. However, the court has -- and uses -- a mechanism for providing this service which receives general support from most members of the Bar.

Summary

The Unified Family Court believes that its objectives can be achieved only if the legal rights and interests of all parties are protected. It was assumed that, for the most part, the clients themselves would ensure protection of their rights by retaining their own counsel. The court would assume responsibility for ensuring protection of the rights of unrepresented parties and children who might be directly or indirectly affected by a court proceeding, through the use of Legal Aid duty counsel and a procedure for appointing separate legal representation for children.

Half of the lawyers who have acted as duty counsel in matrimonial matters report general under-utilization of the service, perhaps because many clients retain their own counsel. Although court attendants routinely suggest to unrepresented clients that they speak to the duty counsel, misunderstanding may result because the client is under stress at the time or because the nature of the service is not clearly communicated to the client.

On the other hand, juvenile duty counsel reported being too busy to spend sufficient time with each child. The addition of a third duty counsel on juvenile days may have alleviated this problem. In any case, lawyers report that they must be able to spend a certain amount of time with each juvenile to ensure adequate protection of his rights. Since most juveniles obtain legal advice and representation from duty counsel, the court would be advised to assess the time needed per case in order to ensure protection of the juvenile's rights. Several lawyers suggested also that juvenile duty counsel be specially trained in the relevant legislation and in advising at the dispositional stage.

Although most (54%) of the lawyers thought that the appointment of separate legal representation under Rule 35 adequately ensures protection of children's rights, 29% thought not. Some thought that the panel of lawyers was not sufficiently trained in the area of children's rights and that the intent of Rule 35 was not always realized.

The question of whether the rights and interests of all Unified Family Court clients are protected will be addressed in the next section.

Section 2: Integration of the Components

Having examined the components (i.e., the strategies and services) of the Unified Family Court separately, we now turn to the operation of the project as a whole, i.e., the way in which these strategies and services functioned collectively to achieve certain instrumental objectives, assumed in the model to be necessary for achieving the desired outcomes. These objectives are:

- Avoiding the resolution of issues on a piecemeal basis, through the consolidation of related issues.
- Developing judges who are specialists in dealing with family problems and who will develop a consistent judicial philosophy.
- Simplifying the process of resolving family matters through the court.
- Promoting reconciliation whenever it is considered possible and desirable.
- Helping the parties to settle issues in dispute when reconciliation is not possible.
- Assuring protection of the legal rights and interests of all court clients.

Also assumed to be necessary in achieving the desired outcomes, are: a physical plant which is not confusing or intimidating and which can accommodate all types of cases and services; the support of adequate resources, especially personnel; an organizational framework; and finally, rules, procedures and forms, all designed to ensure that all clients have access to needed services, to promote the development of a common philosophy

and purpose among those providing the services, and to promote the development of effective links between the court and community services.

In this section we examine first, the functioning of these critical factors and then, the extent to which the instrumental objectives identified above have been achieved by the court.

The Physical Plant

The conceptual model of a unified family court includes a physical plant that would meet the needs of family court clients, an informal but dignified setting for the resolution of family disputes with facilities which would meet the special needs of children.

The Unified Family Court building, located in the heart of Hamilton's business and shopping district, had housed the Provincial Court (Family Division) prior to July, 1977. The one-floor plan includes:

- a reception area which provides access to a waiting area, the conciliation section consisting of two offices with a small but separate waiting area, and the Legal Aid Duty Counsel Office
- the accounts section, where moneys are received and disbursed
- the clerical section, for the filing of all court documents
- three courtrooms, two motions chambers and four interview rooms (used by clients and their counsel and/or probation officers) opening onto the waiting area
- inaccessible to the public are the judges' offices and

library, a secure holding room, a staff room and facilities for members of the Bar including gowning rooms and a lounge

The renovations necessary to provide these facilities were not completed until the end of March, 1979 -- twenty-one months after the project began, which often caused inconvenience for the court personnel, the clients and the legal and social service professionals.

Assessment of these facilities by 145 clients, 74 lawyers, representatives from 10 social service agencies and the court's own personnel, indicates that the physical plant does little to contribute to the Unified Family Court concept.

A major problem identified was the inadequacy of the waiting area in meeting the needs of clients. The majority of lawyers, social service professionals and clients surveyed, reported that the waiting area does not provide a dignified setting for clients. It was described by many as resembling a "bus terminal" or "train station", affording little privacy for clients. Clients reported that they were uncomfortable discussing private matters with their lawyers and/or overhearing the private conversations of others. The use of partitions and grouping of chairs to provide smaller, private areas was suggested by lawyers (23%), agency representatives (70%) and clients (17%). Other improvements suggested include the addition of beverage machines; better reading material including appropriate reading material for children and adolescents; smoking/non-smoking areas; better ventilation and music; and a general "sprucing up" of the area.

Each of these concerned groups reported that the waiting area was simply too small for the number of people using it; that clients are often "piled one on top of another", having to "stare" at their spouses.

Several lawyers commented that the physical setting affects not only the clients, but also the lawyers and court staff serving those clients. One lawyer commented that the "undignified" court setting has a "negative effect on the lawyers and court staff, which carries into the courtroom".

Seventy-one per cent of the lawyers rated the interview rooms as adequate; the others said that there were not enough rooms, and that better sound-proofing is required. Four agencies also stated that more interview rooms are needed.

Although 65% of the lawyers rated the facilities for duty counsel as adequate, 22% rated them as inadequate. The major problems were the lack of office space on the two half days when more than one duty counsel is present, and the small size of the office.

The clerical area, where the accounting and filing of documents is done, was reported as inadequate by 24% of the lawyers; they commented that the counter space is inadequate for filing documents and it is sometimes difficult to reach because the corridor is congested with clients making payments on their accounts. Three agencies reported that the lay-out of the building is confusing for clients. One agency reported that the accounts section is particularly confusing and that there is no place for clients to discuss their accounts privately with the family records clerk. The

restricted area is frustrating for the clerks as well and, as staff members report, has had a negative effect on morale.

Few clients commented on the courtrooms. Some reported feeling so anxious in the courtroom that they didn't notice how it looked, although several commented that it was "too formal" and "intimidating". The informality of the motions chamber impressed some clients favourably.

From these responses, it appears that the physical plant does not adequately meet the needs of many of those who use the court. The administrators and judges have recognized these problems and have tried to improve the situation: the furniture in the waiting room was re-arranged, and the clerical area has been re-arranged several times to improve the counter area and make the files more accessible to the clerks. Also, there are plans to improve the exterior appearance of the building, one aspect of the building on which there were no comments.

Because of the emotional nature of family disputes and the variety of services provided by the Unified Family Court, the physical plant should be designed with certain needs in mind:

- Children and adolescents are regularly present in the building often for entire mornings or afternoons. A separate play area with toys and appropriate reading material would be an asset.
- Personal matters must often be discussed between clients and lawyers or social service professionals. A sufficient number

- of interview rooms should be available for private discussion.
- A waiting area divided into smaller areas (using partitions, chair groupings, plants, etc.) would permit "quick conferencing" between clients and their lawyers in a more private setting and help to reduce the anxiety and embarrassment experienced by clients who feel that "everyone is watching" them.
 - Over half of the clients reported waiting for more than an hour to appear in court. Access to beverage machines would make their wait somewhat easier.
 - An "informal" setting, particularly at the pre-trial stage, seems to be appreciated by clients.

Personnel

For the court to function efficiently it is necessary to have not only an adequate number of personnel to provide the breadth of services required, but also to have personnel whose skills, experience and values are compatible with the needs and objectives of the court. While it is particularly important that senior staff are in agreement with the objectives of the court and the manner in which those objectives will be met, all staff affect the efficiency and effectiveness of the operation of the court, and should, therefore, understand and accept the goals of the court. Clients, lawyers and social service professionals all agreed that the client's initial contact with court personnel is important. But only 20% of community agency representatives thought that the conduct of court staff in the waiting area was "as dignified as possible". Conversely, 85% of the lawyers related it so; an opposite reaction. The social service

professionals objected to the manner in which clients' names are called out in the waiting room, i.e., they disliked the procedure rather than individual personnel. In fact, a number of clients commented that the pleasant manner of the court attendants put them at ease! Some social agency representatives affirmed that this initial contact "sets the tone" and one suggested that court staff might benefit from training to help them deal with the emotional situations that inevitably arise in a family court.

The commitment and dedication demonstrated by court personnel in this innovative project has undoubtedly affected the results. Many, including judges, conciliators and administrative staff have put in long hours to meet the needs of families and their lawyers. Legal and social service professionals in Hamilton have praise for the dedication of the judges and respect for their level of competence. While it is impossible to measure the effects of these factors, we assume that if expanded province-wide, not all Unified Family Courts will be served by personnel with the same level of commitment.

When the Unified Family Court project was established in Hamilton, it had the personnel shown in Figure 1. The actual staffing at the time the project began differed from the proposed staffing in that an additional automatic enforcement clerk position, to handle enforcement of the expected increase in volume of support orders, was not created; also, rather than creating an additional secretarial position, an additional litigation clerk was hired.

A number of changes in staffing occurred as the project developed. While

some personnel change is to be expected in any new organization, such change can markedly influence how a programme functions. The particular staff changes noted below appear to reflect progressive change in priorities and policies of the Unified Family Court during its developmental period.

Three months after the project started the clerk-secretary stopped serving as part-time intake worker because of the increasing time required to perform her clerical/secretarial functions and because of the presumed lack of need for an intake worker.

In November, 1977, a deputy clerk was appointed to assume administrative duties, mainly in the area of trial co-ordination; a need having developed for this function after several months of operation.

In January, 1978, the clerk and deputy clerk assumed quasi-judicial functions when they began to convene pre-hearing conferences (assisted by a parental support worker) in default hearings; this was a change in function rather than of personnel. These new functions reflected the growing concern regarding the use of judicial time and the potential backlog of cases to be tried. Six months later (July, 1978) a new judge was appointed to the County Court, to be available to the Unified Family Court one week per month. At the same time, the Conciliation Services identified the need for an intake service to handle self-referred custody and access problems; the Justice of the Peace who had been doing some intake assumed this role.

In December, 1978, a full-time trial co-ordinator was appointed to ensure efficient pre-trial and trial scheduling and to reduce judicial "down time"

(i.e., the time that judges are out of court because a matter to be tried has been settled). This appointment allowed the deputy clerk to assume more quasi-judicial functions, including the handling of the civil "first appearances" (the function at these hearings is basically administrative in nature). It was thought that this change would free up additional judicial time.

In February, 1979, personnel changes in the accounts section led to the elimination of the automatic enforcement clerk position which resulted in a considerable reduction in the automatic enforcement service.

As demands on Conciliation Services changed, it became apparent that one conciliator was unable to respond to the changing needs of the court, particularly for investigation of custody/access disputes. Following his retirement at the end of March, 1979, it was agreed that conciliators must be qualified social service professionals. Negotiating a new contract and recruiting a suitable candidate consumed seven months. During this period the service was staffed by only one conciliator which resulted in a reduction of service, particularly to self-referred clients. The vacant conciliation position was filled at the end of October, 1979. At approximately the same time, a fourth judge was appointed to the court as more judicial manpower was deemed necessary to ensure expeditious conclusions of proceedings. (The aforementioned County Court judge had not been available to the Unified Family Court during the six months prior to the appointment of this fourth judge).

In summary, the court's growing concern regarding the effective use of

judicial time and the prevention of backlogs are reflected in:

- the creation of the position of a full-time trial co-ordinator which resulted in the loss of the automatic enforcement clerk position
- the assignment of quasi-judicial functions to the clerk and deputy clerk
- the diversion of conciliation resources from pre and post-court clients to conciliation or investigation of disputes before the court, including the appointment of a new conciliator who is qualified to conduct investigations and conciliation of court-referred disputes
- the appointment of a fourth judge

Personnel changes which occurred in response to developing needs and priorities affected the delivery of some of the proposed services including intake, counselling, conciliation and enforcement.

The Organizational Framework

The organizational framework of the court should facilitate efficient and effective integration and operation of the court services and strategies. To accomplish this, the roles and responsibilities of all relevant actors in the organization must be clear.

The organizational framework of the Hamilton Unified Family Court as presented by the Ministry of the Attorney General in its "Submission to the Government of Canada for a Unified Family Court Project at Hamilton,

Ontario" (1977) is presented in Figure 2.

A general supervisor was assigned to the Unified Family Court project to act as a liaison between the Ministry of the Attorney General and the Unified Family Court.

The clerk of the court supervises all court staff members and, with the deputy clerk (a position created five months after the project began), is responsible for the day-to-day operation of the court. The clerk is responsible to the head office at the Ministry and to the judges of the Unified Family Court.

Both the clerk and deputy clerk reported that at times their roles and responsibilities were unclear; other staff reported some confusion with respect to the administrator's roles and the lines of authority. This confusion may have arisen because:

- at the time of his appointment, the deputy clerk's functions were not specifically and formally communicated to the staff, and
- the deputy clerk assumed administrative authority (informally) in some areas that were perceived to be the responsibility of the clerk

Also, both administrators reported that at times the administrative role played by the judiciary has created confusion and frustration for them in terms of defining their responsibilities. Each judge of the Unified Family

Court has a "portfolio" of general areas of responsibility. The judges take part in planning and policy decisions and each is involved with problems arising in his areas of responsibility; at times this involvement has included day-to-day administrative matters. Judicial participation in administrative matters at the Unified Family Court can only be understood in light of the following:

- Provincial Family Court judges have traditionally played a strong role in the administration of Provincial Family Courts in Ontario -- partly because of the small size of many of these courts, and Section 20 of The Provincial Courts Act, which seems to give the Provincial Family Court judge ultimate administrative authority.
- As the designers of this experimental project, it is natural that the Hamilton judges are interested in all areas of the project and concerned that they are running smoothly.

Although it is important that roles and responsibilities be clear, innovative programmes, such as the Unified Family Court, invariably experience difficulties in defining roles and responsibilities. The court recognizes the problems and has formulated plans to resolve some of them.

In order to deal with issues of mutual concern to the court, the Bar and the community agencies, and in order to establish a communication channel between the court and the community, it was proposed initially that four committees be established. These were:

General Advisory Committee. A committee to be composed of the judges, the general supervisor, the researcher and representatives of the Ministry of the Attorney General, the Department of Justice, the Hamilton Bar and one of the social agencies; its purpose was to "consider issues concerning the general functioning of the court and areas such as rules and procedures".

Legal Liaison Committee. This committee was "to maintain contact with the local Bar, the Crown Attorney, the Official Guardian, the Sheriff and the Special Examiner".

Resource Committee. This committee, first established to supervise the conciliation project of the Provincial Family Court in Hamilton, was to "co-ordinate relations between the court and the outside services".

Internal Administration Committee. A committee to discuss internal administrative matters; to be composed of the judges, the general supervisor and administrators.

The General Advisory Committee was never established; any problems arising with respect to the general functioning of the court were dealt with by one of the other committees, or on an ad hoc basis.

The Legal Liaison Committee (composed of a judge, the administrator and several members of the Bar) has met regularly once a month or more often when needed, since the beginning of the project. This committee provided the Bar (i.e., the Family Law Section of the Hamilton Law Association) with

the opportunity to express its concerns to the court. The results of these meetings and of developments at the court were communicated to members of the Bar at their association meetings and through practice memoranda. The first such memorandum (August, 1977) presented the general philosophy of procedure and practice; the two memoranda which followed were used to update and to address specific areas of concern.

The Resource Committee first met ten months after the project began, as an ad hoc committee to establish policy guidelines for conciliation. The Resource Committee was re-established as the "Conciliation Advisory Committee" in the Fall of 1978, and re-named the "Standards Committee" in February, 1980. Composed of representatives from twelve community social agencies, one lawyer, one judge and two conciliators, a second lawyer and one of the court administrators joined the committee in the Fall of 1979. The full committee met approximately once every three months to discuss overall policy issues and a smaller sub-committee met monthly throughout 1979 to resolve specific problems. This committee (like the other two court committees) meets under the auspices of the judiciary and has no authority other than that given it by the court.

The Internal Administration Committee, composed of all the judges and administrators, met an average of once per month since the beginning of the project. Internal administrative matters relating to Conciliation Services were dealt with in weekly meetings with the conciliators and one judge. The need for involvement of the court administrators in the Conciliation Services resulted in the deputy clerk joining this group in January, 1980. At the invitation of the court, the Standards Committee recently appointed a

representative from this committee to attend meetings of the internal conciliation administration group, when it appears that recommendations made by the Standards Committee may relate directly to administration of the Conciliation Services.

The committee structure thus implemented, provided links between the court and the Bar and between the court and the social service agencies. Although each of these two professional groups (legal and social) offers essential but separate services -- a distinction which the court, legal and social service professionals all think should be maintained -- the committee structure allows the legal arm to have input into the social arm, but not vice-versa. The proposed General Advisory Committee, which would have given the social arm the opportunity for input into the general functioning of the court, was never established.

Internally, the legal and social arms have been kept separate; a conciliator does not sit on the Internal Administration Committee and for more than two years of the project, the administrators had virtually no contact with the social arm -- which made their administrative support of these services very difficult. As reported by some community agencies, the social arm perceived its status as inferior to that of the legal arm, which may be attributed in part to the committee structure.

In summary, various aspects of the organizational framework have not been as effective in facilitating the operation of the court as might have been hoped.

- The General Advisory Committee, which would have provided both legal and social service professionals the opportunity to have input into the general functioning of the court and thus facilitated integration of their services, was never established.
- The community social service agencies did not have input, as a committee, into the functioning of the Conciliation Services until ten months into the project. Once established, the committee's mandate, as reported by members, was unclear, particularly the role of the committee with respect to policy and decision making. Committee members reported that for these reasons, the committee was not as effective as possible.
- The roles and responsibilities of the administrators, particularly with respect to the Conciliation Services, was unclear.

We believe that most of these problems are inevitable in any new, innovative programme, and the court has attempted to resolve many of them on an on-going basis. However, identifying these problems demonstrates the importance of having a well-designed organizational framework, and illustrates ways in which organizational structure influences the realization of programme goals.

Rules, Procedures, Forms

Rules and Procedures. In January, 1977, the Attorney General appointed an ad hoc Rules Committee for the Unified Family Court. The task of this committee was to develop rules for the Unified Family Court that would:

- promote procedures which avoid the traditional adversary approach
- simply and clearly indicate the whole range of procedures from the commencement to the conclusion of an action, including enforcement
- provide standard forms, adaptable to the circumstances of each case
- encourage resort to the use of various court facilities

When the project began, there were 54 rules made under The Unified Family Court Act; the number of rules increased to 71 with proclamation of The Family Law Reform Act and to 99 with proclamation of The Child Welfare Act (many fewer than the Supreme Court with more than 800 rules). In addition to rule changes resulting from legislative change, other changes resulted from a review conducted by an ad hoc committee established in February, 1979 in response to several activities, including the judges' assessment of developments in practice, a meeting with the Bar in late 1978 and meetings of the Legal Liaison Committee.

In the survey of Hamilton lawyers, respondents were asked to assess the statement that "the practice and procedures of the Unified Family Court result in a less adversarial approach to the resolution of family disputes". Most (63%) agreed with this statement, although 14% disagreed and 23% had no opinion. Their comments indicated support for de-emphasizing the adversarial approach; one wrote that many lawyers now practicing at the Unified Family Court "are developing a sense of wanting to solve problems rather than clobber opponents". This shift may be attributed, at least in

part, to the rules and procedures which have attempted to reflect the philosophy of the court.

Some lawyers reported that not all the rules and/or procedures were consistently clear, simply worded or comprehensive; 36% of those surveyed stated that the rules did not clearly indicate the means for enforcing an order and 26% commented that changes are needed in the rules or procedures related to these matters.

Twenty-six per cent recommended changes in pre-trial procedures; of these, most advocated discretionary use of the process by lawyers and clients, particularly with respect to a second pre-trial. But in this instance, the objection is to the procedure itself, rather than to the rules.

Rule changes were made with respect to references; however, 11% of the lawyers surveyed suggested that procedural clarification is desirable (eg., the types of issues directed for reference and the persons conducting the reference).

Some of the Bar's confusion with the several functions of Conciliation Services (i.e., counselling and conciliation) may have been due to the absence of rules governing these services, making them different from other strategies, such as the pre-trial processes, which have been incorporated into the rules of the court.

Forms. Only 2% of the clients interviewed reported completing court forms without assistance. Most reported that their lawyers completed the forms; a

few received assistance from court staff, the duty counsel or a welfare worker. Whether the specially designed forms have achieved the level of simplicity and clarity that permits their use by non-legal professionals is unknown, although apparently there is little need at the Unified Family Court for clients to be able to complete the forms themselves. In a preliminary survey of lawyers, 41% rated the forms as being easily adaptable to the circumstances of each case, while 33% thought they did not achieve this objective. The forms have simplified the procedure, in that all claims, including divorce, can be made on a single form.

Consistent with the objectives of the Unified Family Court, an attempt was made to simplify and streamline the rules and procedures of the court. It was to be expected that some of the rules might prove to be inadequate as the project developed and as legislative changes were introduced. The court was prepared to, and did make changes in response to these events.

Although some concerns were raised by members of the Bar with respect to the rules and procedures of the Unified Family Court, there appears to be a consensus that the objectives of simplicity, flexibility and de-emphasis of the adversarial process were achieved. The court has provided the Bar with opportunities to identify their concerns and to suggest improvements through the Legal Liaison Committee and the Ad Hoc Rules Committee.

Now, having discussed the physical facilities, the personnel and organizational framework of the court, the rules, procedures and forms, we turn to the six instrumental objectives of the court deemed necessary to achieve the desired outcomes:

1. Consolidate related issues and proceedings to allow the court to deal with the total problem.
2. Develop a consistent judicial philosophy through the use of specialist judges.
3. Simplify the court process.
4. Facilitate reconciliation.
5. Effect settlements.
6. Protect the legal rights and interests of all family members.

Consolidation -- Dealing with the Total Problem

To avoid the resolution of issues on a piecemeal basis, related issues may be consolidated at the Unified Family Court either within a proceeding, i.e., the parties may bring all related issues before the court in one application, or through the consolidation of two or more proceedings under Rule 17(2) of The Unified Family Court Act.

Consolidation of Issues

Support, custody and access can be granted under The Divorce Act. The specially designed divorce forms used at the Unified Family Court permit both petitioner and respondent to make these and other related claims under other acts such as The Family Law Reform Act. Table 8 shows that 53% of the contested and 11% of the uncontested divorce petitions included property claims under The Family Law Reform Act, such as exclusive possession, ownership and division of assets. In the Hamilton sample of divorces prior to unification, no property claims were made on divorce petitions, although in the Waterloo sample, property claims were made under The Family Law Reform Act on 24% of the contested and 7% of the uncontested divorce petitions filed in the Supreme Court. It is evident that many litigants took advantage of the court's ability to resolve all related issues including property, in a single proceeding at the Unified Family Court. Although property claims can be made on a Unified Family Court divorce petition, property is less likely to be an issue in a divorce than other corollary relief issues (Table 9). A claim for support was made in more than 90% of all contested divorces and in approximately 40% of uncontested divorces; custody and/or access was claimed in approximately 80% of

contested divorces and in 45% to 55% of uncontested divorces.

Looking at all other civil actions, Table 10 shows that litigants brought more issues before the Unified Family Court in a single action than they did in Hamilton prior to unification and somewhat more than in the existing system in Waterloo. In both Waterloo and the Unified Family Court, most of these actions (60% and 74% respectively) were commenced under The Family Law Reform Act. The greater number of issues per case in these samples may be attributed to this comprehensive legislation.

The majority of clients in the Unified Family Court and in the Waterloo courts were seeking resolution of support and custody/access issues (Table 11). Prior to the Unified Family Court, most Hamilton clients seeking resolution of these issues would have laid a charge under the DWCMA (excluded from Table 11) explaining the lower proportion of civil actions with support and/or custody claims in that sample.

In the existing system, three courts (Supreme, County, Provincial Family) have jurisdiction in matters under The Family Law Reform Act. In Waterloo, most actions under The Family Law Reform Act are commenced in the Provincial Family Court (Table 12) which handles the majority of support and custody applications; this court does not have jurisdiction over property matters. However, the County Court, which hears most property division claims, also handles many support and custody applications; litigants often brought more than one issue for resolution at this court. While less frequent, Family Law Reform Act proceedings commenced in the Supreme Court also involved a variety of claims in a single proceeding.

Consolidation of proceedings

In the existing court system, proceedings were consolidated in less than 20% of the cases known to have had two or more proceedings simultaneously before the courts. However, in the Unified Family Court samples, simultaneous proceedings were consolidated in 73% of the cases sampled. Although separate proceedings were more likely to be consolidated in the Unified Family Court, it appears that simultaneous proceedings were as likely to be commenced in the Unified Family Court (9%) as in the existing system (10%).

Summary

The comprehensive jurisdiction of the Unified Family Court along with its rules and forms, has resulted in a higher proportion of proceedings with more than one claim and a higher proportion of cases in which separate proceedings are consolidated to be disposed of in a single proceeding.

A comparison of two non-unified family court systems, before and after the introduction of The Family Law Reform Act, suggests that this new legislation has also had the effect of increasing the number of claims in a single proceeding.

By resolving all related issues simultaneously in a single proceeding, it is assumed that families will obtain a more satisfactory outcome at less cost. These outcomes are discussed in Chapter IV.

Specialist Judges

It was assumed that judges of a unified family court would become specialists in family law matters and would develop a consistent judicial philosophy in the handling of these matters, particularly with respect to the use of social services. Representatives of social service agencies in Hamilton support the idea of having specialist judges, because they feel that these judges will develop greater awareness of the needs of families, have a greater interest in and be more likely to use the various social services available to help families.

An evaluation of the Unified Family Court in British Columbia (Amren and MacLeod, 1979), a two-tier model using federally and provincially appointed judges hearing different types of cases, found that a consistent approach to the use of social services did not develop; the Supreme Court judge (a "non-family specialist") used the services infrequently.

Although all judges of the Hamilton Unified Family Court agree on the necessity of social services being available to court clients (as reported in the March, 1980 Conciliation Report) there was inconsistency among judges with respect to the use of the various services; two judges tended to make more mandatory referrals to the Conciliation Services while another preferred voluntary use of the service. When this resulted in some confusion for the Bar, the judges agreed to adopt a consistent approach, i.e., to use mandatory referrals.

Two different community agencies reported that "the judges work differently in terms of what they believe to be in the best interests of children". Both agencies said that their workers prepare their cases differently, depending on which judge will be hearing the case. Two suggestions were offered by the agencies:

- (1) One judge should follow through on certain cases, eg.,
wardship matters.
- (2) Since there is some judicial inconsistency in the
handling of adoptions, one judge should handle all
adoptions, as had been the case in the County Court.

Some inconsistency in the use of the various court services by the judges does not mean that the judges are not specialists in family law matters; rather, it suggests that specialization does not necessarily result in the development of a consistent judicial philosophy or practice. Comprehensive rules and procedures are a necessary condition for the development of a consistent judicial practice. However, consistency in practice itself, is not sufficient evidence for assuming philosophical consistency.

Simplifying the Process

Through the specially drafted court procedures, rules and forms, it was assumed that: (1) the court process would be simplified; that is, matters would be brought before the court faster than in the existing system; (2) the need for interlocutory motions would be reduced, and (3) the procedures, designed to promote early settlement, would result in less time at court and for clients. This would help to achieve the objectives of reducing delay and costs.

All courts with jurisdiction over the DWCMA (now repealed) set a court date when the charge was laid. Table 13 shows that these matters were brought before the court approximately a month after commencement of the action and the differences between courts are not significant.

In all civil actions in the Unified Family Court and the Provincial Family Courts elsewhere in Ontario, a day for hearing is set upon commencement of a proceeding. This "fixed date" system was adopted in the Unified Family Court to ensure that matters would be brought before the court quickly and concluded quickly. Divorce actions are brought before the court significantly faster in the Unified Family Court than in either the Supreme Court in Hamilton prior to unification, or the Supreme Court in Waterloo.

Although other civil actions are now brought before the Unified Family Court much faster than they were brought before the Supreme, County and Surrogate Courts in Hamilton prior to unification, there is no difference between the Unified Family Court and the system currently operating in Waterloo. There,

the majority of actions under The Family Law Reform Act are commenced in the Provincial Family Court, which operates with the fixed date system; in the County Court, Family Law Reform Act actions are commenced by motion and are brought before the court as quickly as at the Unified Family Court.

The fixed date system assures that all court proceedings have some type of final disposition. Many actions commenced in the Superior Courts were never concluded; i.e., they were neither discontinued nor set down for trial. This occurred in 10% of the contested and 3% of the uncontested Supreme Court divorces in Hamilton, and in 11% of the civil actions. In Waterloo, 7% of the contested divorces and 6% of other civil actions were never set down for trial or otherwise disposed. However, all actions commenced in the Unified Family Court and the Provincial Family Court, with a fixed date system operating, had final dispositions.

In uncontested divorce actions and other civil actions, interlocutory motions were used as frequently in the Unified Family Court as they were in both the non-unified court system in Hamilton prior to unification and Waterloo (Table 14). However, there were significantly more interlocutory motions in contested divorce actions in Waterloo than in either the Hamilton Supreme or Unified Family Court. These differences might be due to different practices of members of the Bar in these two communities. Nevertheless, it appears that the rules and procedures designed to bring matters before the court quickly, have not reduced the need for interlocutory motions.

Although there were no differences in the average number of adjournments or

average number of court appearances per DWCMA case, there were significantly more court appearances and adjournments per case in the Unified Family Court in all civil actions (Tables 15 and 16). Several lawyers commented that they thought there were too many adjournments at the Unified Family Court. Of the court clients interviewed in Hamilton (145) and Waterloo (43), 35% of the Hamilton clients reported that their cases were adjourned two or more times, compared with only 9% of the Waterloo clients. Thirty per cent of the Hamilton clients reported coming to the court four or more times (to appear in court as well as for other reasons) compared to only 12% of the Waterloo clients. Although more of the Hamilton clients interviewed were parties to contested actions (thus more adjournments and court appearances might be expected) the differences are nonetheless striking, and are supported by data from the court files. Clients were often present at the Unified Family Court when interlocutory motions were heard, a practice opposed by several lawyers. However, it should be noted that the presence of clients is left to the discretion of counsel; the court believes that clients have a right to attend, even though it may not be necessary. So while unnecessary attendance is costly and frustrating, it is the responsibility of counsel to advise their clients when attendance is not necessary. Attendance at court is also costly; 55% of the working clients reported losing wages as a result of taking time off work to appear in court. It may be possible that because of the Unified Family Court's settlement-directed techniques, clients attend less often at their lawyer's offices, though more often at the court. Unfortunately, no data were available.

Judges and administrators were also concerned about the number of

adjournments. They believe that the fixed date system, although desirable, has resulted in many adjournments, because the case is often not ready to proceed on the first appearance date. In order to reduce the number of adjournments in divorce proceedings, the court has incorporated an assize system procedure into its fixed date system by setting the first appearance date farther ahead and moving the case forward if it is ready to proceed before the fixed date.

Some clients and lawyers reported that the court's enforcement procedures and services lack simplicity. The automatic enforcement programme, which was intended to simplify the enforcement procedure for the creditor, is no longer operating as proposed. Clients reported that they must attend at court and retain lawyers in an effort to secure payment on a maintenance order.

In attempting to conclude matters expeditiously and use judicial time efficiently, some of the simplicity may have been lost. However, it may be unrealistic and unfair to expect a new court which introduced new rules, procedures, forms and services to a sometimes skeptical Bar, to simplify the process significantly in a few years.

Facilitating Reconciliation

One of the court's objectives is to preserve and strengthen the family. The traditional approach to accomplishing this objective with separating couples has been to encourage and assist in preserving or restoring the marriage. However in recent years, a greater emphasis has been placed on the conciliation of disputes. In a study of counselling in family courts (Himelfarb et al., 1980), examination of 193 articles published over the past several years on the role of counselling found a shift in emphasis from reconciliation to conciliation of issues corollary to separation.

Other than Section 8 of The Divorce Act, which directs the judge to inquire about the possibility of reconciliation, no other means has been incorporated into the court process to ensure exploration of the possibility of reconciliation. Reconciliation is not a high priority objective at the Unified Family Court:

- There is no systematic intake service at the court which might identify clients interested in reconciliation at the pre-court stage (when reconciliation is perhaps most possible) for referral to an agency for counselling.
- Very few referrals for reconciliation are made by the court to the Conciliation Services.
- The primary function of the Conciliation Services is to resolve issues corollary to separation and divorce; a policy guideline paper states the service "does not place a particular emphasis on reconciliation".

Only 2% of the referrals to Conciliation Services in the first two years of the project were known to have resulted in reconciliation. There may well be other couples who have reconciled after having sought resolution through the legal process, but if so, it was without the aid of the court.

Whether the court should be playing a stronger role in encouraging and helping couples to restore their marriages is an issue for the court to decide. It may be that a Unified Family Court is able to achieve only limited success in promoting and effecting reconciliation, (that most clients are "beyond the point of no return" before reaching the court). Because of the low priority placed on the goal of reconciliation by the Hamilton model, we are unable to answer this question.

Effecting Settlements

Helping families to settle the issues in dispute is a high priority goal for the Unified Family Court; all its services and strategies at all stages of the court process are settlement-oriented. Settlement is viewed as desirable because it is assumed to:

- result in a more expeditious resolution
- result in a less costly resolution for the parties and the court
- produce an outcome with which the parties are more likely to comply

This last assumption is based on yet another -- that parties participate in the negotiation of their own settlement; the ensuing feeling of "ownership" of the settlement leads presumably, to more satisfaction with the outcome than when it is adjudicated.

Effectiveness

We thought that effectiveness in settling cases at the pre-court stage might be reflected in a lower proportion of contested matters being brought before the Unified Family Court. However, this is not the case. The proportions of contested divorce actions commenced in Hamilton during the three years prior to unification and in Waterloo during the project period (14%), were similar to those commenced in the Unified Family Court (17%). The proportion of other civil actions that were contested in Hamilton prior to unification, in the Unified Family Court and in the Waterloo Courts is 51%, 45% and 46% respectively; again, essentially the same. However, given the

priority of providing services at the court rather than pre-court stage, these results are not surprising.

Examination of contested cases at the court stage (Table 17), revealed a significantly higher proportion of settled divorces in the Unified Family Court, compared with divorces in the Hamilton Supreme Court prior to unification ($\chi^2 = 6.21, p < .05$); but there was no difference between the settlement rate of the Hamilton Unified Family Court and the Waterloo Supreme Court. (Note: the Waterloo divorces reported in Table 17 were commenced between July 1, 1976 and July 1, 1977; 20% of the contested divorces commenced between July 1, 1977 and December 31, 1978 were not disposed at the time the data were coded, so that no comparisons can be made.)

The proportion of other civil actions settled is greater in the Unified Family Court than in the superior courts in Hamilton prior to unification, although again, there is no difference among these groups in the proportion of cases tried. These "no difference" findings may well be due to the various settlement-oriented services and strategies that are also used in the Waterloo courts. Findings reported in Section 1 of this Chapter suggest that each of the court's dispute resolution techniques, social and legal, facilitated the settlement of disputes, although the extent to which each contributed to the overall settlement rate cannot be determined.

In summary, the settlement rate in the Hamilton Unified Family Court is higher than the non-unified court system in Hamilton, but there is no difference between the settlement rates of the Hamilton Unified Family Court

priority of providing services at the court, rather than pre-court stage, these results are not surprising.

Examination of contested cases at the court stage (Table IV), revealed a significantly higher proportion of settled divorces in the Unified Family Court, compared with divorces in the Hamilton Supreme Court prior to unification ($\chi^2 = 0.02$, $p < .05$); but there was no difference between the settlement rate of the Hamilton Unified Family Court and the Waterloo Supreme Court. (Note: the Waterloo divorces reported in Table IV were commenced between July 1, 1976 and July 1, 1977; 20% of the contested divorces commenced between July 1, 1977 and December 31, 1978 were not disposed at the time the data were coded, so that no comparisons can be made.)

The proportion of other civil actions settled is greater in the Unified Family Court than in the superior courts in Hamilton prior to unification, although again, there is no difference among these groups in the proportion of cases tried. These "no difference" findings may well be due to the various settlement-oriented services and strategies that are also used in the Waterloo courts. Findings reported in Section I of this Chapter suggest that each of the court's dispute resolution techniques, social and legal, facilitated the settlement of disputes, although the extent to which each contributed to the overall settlement rate cannot be determined.

In summary, the settlement rate in the Hamilton Unified Family Court is higher than the non-unified court system in Hamilton, but there is no difference between the settlement rates of the Hamilton Unified Family Court

and the Waterloo non-unified court system. This outcome may not be surprising; we know that given sufficient time, a high proportion of contested issues eventually settle. The greatest, and perhaps the most important difference found between the unified and non-unified court systems in their handling of contested divorces, was the speed with which contested cases were settled. In the Hamilton Unified Family Court the settled divorces took an average of 173 days to conclude, compared to 408 days and 335 days in the Supreme Courts in Hamilton and Waterloo respectively.

While these results indicate that the Hamilton Unified Family Court has been successful in facilitating settlement, a major objective of the court, findings relating to the assumptions made about settlements and their implications for reaching the outcome objectives, are also important.

Two assumptions are made about settlements:

- that clients participate in the settlement process, i.e., they reach their own decision rather than having the court make the decision for them.
- that because it is their own decision, they are more satisfied and therefore will be more likely to comply with the terms

Of the 84 clients interviewed whose cases were settled, 4 reported that there was no settlement, i.e., a judge had tried the case; 10 said that although they signed the settlement, in fact lawyers (3) or judges (7) had actually made the settlement; 42% of clients who had pre-trial conferences reported that the lawyers, the judge or the "system" had pressured them into a settlement. Two clients reported that they accepted an unsatisfactory

settlement only because they thought the judge would change it to make it more equitable. These findings indicate that many clients either did not, or believed they did not, play an active role in settling their disputes. Obviously, some did not understand the concept of a settlement.

Of the 27 clients interviewed whose cases were tried, 15 thought it would have been better if they had been able to settle their disputes, 11 said it was better to have the issues tried and one client was undecided.

Overall, less than half (42%) of the clients stated that settlement is preferable to trial; 37% said a trial is preferable and 21% were undecided.

Clients whose cases are settled are not necessarily more satisfied with the outcomes; 47% of the clients whose cases settled reported satisfaction with the order compared to 50% of those clients whose cases were tried; 42% of the clients who settled their disputes were dissatisfied compared to 32% of the tried cases, even though the clients who went to trial reported being "very dissatisfied" more often (Table 18).

While court orders resulting from contested actions are more likely to require enforcement than those resulting from uncontested actions, there is no evidence that judgements require enforcement more often than consent orders. Clients unable to settle their disputes through the Conciliation Services were just as likely to comply with the terms of the final order as were those who did conciliate their disputes.

These findings challenge some of the assumptions made about settlements:

- Settlements are not necessarily client-negotiated, in fact, very few clients reported participating in the settlement process to any major degree.
- Perhaps because of minimal participation, many clients do not have a feeling of "ownership" of their settlements, rather, they are viewed as the court's or the lawyer's "settlements".
- Even after the issues have been resolved, whether settled or tried, not all clients believe that settlement is better than trial.
- Clients are no more satisfied with the terms of a settlement than with the terms of a judgement. They may feel that having put all the evidence before the court, the adjudicated result is more equitable than a settlement negotiated by their lawyers or which they felt pressured to accept.
- Although not conclusive, the findings do not support the assumption that clients are more likely to comply with the terms of a settlement than those of a judgement.

This does not imply that the court should not strive to help families settle their disputes; rather, it suggests that the court review the process by which settlements are negotiated.

Protecting Legal Rights and Interests

The various rules, procedures and services of the court, described in Section 1 of this Chapter, were designed to ensure the protection of the parties' rights and interests, as well as the rights of children directly or indirectly affected by a court proceeding.

Client Assessment

In the Unified Family Court, most litigants are represented by lawyers. Of the 131 represented clients interviewed, only 7% reported that they did not believe their lawyers properly protected their rights. However, other clients were dissatisfied with the way in which their lawyers handled their cases. Fifteen per cent reported that the lawyers escalated the problem and discouraged the clients from resolving the disputes, indicating that clients may have thought their interests were not properly represented. Twelve per cent believed that legal representation should not be necessary in a family court, i.e., that the court should be able to protect the rights of both parties. Some clients seemed to look to the court rather than to their lawyers, for protection of their rights; a few represented clients stated that they had agreed to inequitable settlements because they thought the judge would change the terms.

Although 5 of the 14 unrepresented clients interviewed reported that they had not retained a lawyer because they couldn't afford one, most (10) felt they would not have been any better off with a lawyer. Since only 5 of these 14 clients spoke to the duty counsel, we cannot say whether clients felt that the duty counsel service protected their rights.

Lawyer Assessment

Although most clients apparently felt their legal rights and interests had been protected, some lawyers were concerned that various court procedures did not ensure protection of their clients' rights. The confusion with respect to conciliation and investigation procedures resulted in one such concern -- "evidence" that lawyers had assumed was privileged had been placed in court files. Although the court has since taken steps to clear up this confusion, with new policy and procedures, the problem underlines the importance of having clearly articulated policies and procedures to ensure that the rights of clients are "seen to be" protected.

Thirty-one per cent of the lawyers reported that the court's system of handling default proceedings fails to ensure adequate protection; less than half (43%) said the clients' rights are protected in these matters. Their main concerns were the lengthy adjournments, the use of quasi-judicial officers and the unavailability of judges to hear these matters -- particularly when clients were unrepresented.

The protection of the legal rights and interests of children in both protection matters under The Child Welfare Act and matrimonial proceedings under The Divorce Act or Family Law Reform Act, is of special importance to the court.

Although a lawyer had not been appointed for the children of any of the clients interviewed, they perceived the investigations conducted by both the Conciliation Services and the Official Guardian as a means for ensuring that

the best interests of children are served. However, some clients and lawyers were critical of the investigation process, suggesting that it was not thorough enough to protect the childrens' interests. This opinion was expressed more often of the Official Guardian's investigation, which they said deals only with the "material situation" and makes no helpful recommendations to the court.

Most lawyers reported that the Unified Family Court rules and procedures adequately protect childrens' rights. However, some concerns were raised. Some thought that the lawyers appointed to represent children did not have adequate training in this area; others thought that matters dealing with the placement of children were not dealt with as expeditiously as possible, suggesting that the children's best interests (if not their rights) were not always well served. And with regard to settlements, a few expressed concern that the court's acceptance of settlements affecting children would not always be in the child's best interests.

Half the lawyers (49%) said that they felt the presence of duty counsel adequately ensured protection of the legal rights of juveniles, but 29% felt it did not. The main concern was the lack of time available to interview and advise each juvenile -- a concern that may no longer exist with the addition of a third duty counsel during the last three months of the project. We would recommend that the court continue to monitor this situation.

Summary

Although most clients and lawyers believe the court ensures protection of

the legal rights and interests of the parties and their children, some concerns were raised, several of which the court has already addressed:

- Some lawyers were concerned that the court's emphasis on settling cases could jeopardize the rights and interests of children affected by those settlements.
- Some clients, presumably misunderstanding the concept of a settlement, expect the court to change what they believe to be inequitable settlements.
- Confusion arises when policy and procedures are not clearly articulated and consistently applied.
- Some lawyers were concerned about the effects of lengthy adjournments, clerks performing quasi-judicial functions and the reported unavailability of judges in enforcement proceedings, on the rights of clients.
- Juvenile duty counsel can protect their clients' rights only if sufficient time is available to assess and advise in each case.

This Chapter has focused on the court process; the ways in which the Unified Family Court in Hamilton translated the conceptual model of a unified family court into an operational model. As expected, problems were encountered in the implementation of the conceptual model, which is only a "blueprint", as unanticipated needs of both the court and the families it serves were responded to.

Hopefully, this evaluation of court process will assist project managers in

making decisions about this project and help policy makers in planning similar projects elsewhere. Also, it provides a context for the interpretation of project outcomes. We now turn our attention to these outcomes.

CHAPTER IV

THE OUTCOME EVALUATION

In this Chapter we examine the extent to which the Unified Family Court in Hamilton achieved the objectives as formulated in the conceptual model. (Chapter III) allows us to better interpret and explain the findings.

The outcomes are examined in terms of the extent to which the court served: (1) the interests of the families seeking resolution of their disputes through the courts, and (2) the interests of society or the state.

Confusion and Frustration Experienced by Families

It was assumed that unification of jurisdiction and simplifying the court process would reduce confusion and frustration for families. Clients were interviewed to obtain their assessment of their recently concluded court action in the Unified Family Court or in a non-unified family court system (Kitchener-Waterloo). We did not expect many of the clients to have experienced the "fragmented" system, but in fact, we found that many had sought resolution of a family dispute in another court, prior to their most recent action; 30% of the Unified Family Court clients reported that they had been litigants in a superior court action (Supreme, County or Surrogate) and an additional 6% had been litigants in a Provincial Family Court action outside of Hamilton. By comparison, 21% of the Supreme Court clients in Waterloo had been to the Provincial Family Court and 11% of the Provincial Family Court clients had been parties to a superior court action.

Of the 44 Unified Family Court clients who reported having a previous superior court action, 14 compared their experience; 12 stated a preference for the Unified Family Court. Six clients with multiple-court experience (4 Hamilton, 2 Waterloo) commented that the "running around" to different courts was confusing and frustrating.

Quite apart from any confusion and frustration experienced as a result of using more than one court, some clients identified confusion and frustration experienced in their recent court action.

Clients in both cities were asked to rate their recent court experiences on a number of scales, including "confusion" and "frustration". Though most clients reported experiencing little or no confusion, 20% of the Unified Family Court clients reported some confusion, compared with 13% of the Supreme Court clients (mainly uncontested divorces) and 39% of the Provincial Family Court clients (many of whom were unrepresented by lawyers).

Even though most (80%) Unified Family Court clients thought they had a good understanding of the court action, their comments revealed some confusion in specific areas, including:

Conciliation Services. Only 4 of 15 clients referred for voluntary conciliation seemed to understand its purpose; only half were aware of the confidential, voluntary nature of this service. While most clients understood the purpose of an investigation, again, only half of them understood the non-confidential, mandatory aspect of this

service.

Court hearings. Of 23 clients who did not appear before a judge, only 6 correctly responded that a settlement had been reached and so it was not necessary to appear before a judge. Eight did not know why they had not seen a judge and 9 appeared confused, reporting that their case was not "serious enough" to go before a judge.

Of 65 clients who had pre-trial conferences, 28% said they did not know the purpose of the conference. Of the clients who had not been present in the conference room, more than half did not know why they had been excluded. Of the clients who had been present for their conference, one third said that an explanation of the proceedings would have been helpful.

Twenty-three per cent of all clients reported being unprepared for what to expect in the court hearing and several also said information on court procedure would have been helpful. (Waterloo clients expressed similar opinions, particularly the unrepresented clients.)

The Court Order. Most clients reported that they understood the court outcome, but again, some seemed confused. Sixteen per cent of Unified Family Court clients compared to 7% of the Waterloo clients said there was something about the order or settlement that they did not understand. Thirty per cent of Unified Family Court clients thought the terms of the order could not be changed if there was a change in

circumstances, compared to 23% of the Waterloo clients. Some clients asked the interviewer the difference between a decree nisi and a decree absolute; some were unaware that a court order had been made -- they thought they had a "settlement" only. Some clients reported that their lawyers had not provided a satisfactory explanation of the court outcome, and that they were too "embarrassed" to ask their lawyers for an explanation.

Forty-two per cent of the Unified Family Court clients reported frustration as a result of their experience compared to 37% of the Waterloo clients. Many who viewed their court experience as frustrating also felt that their case had been handled inefficiently. While most clients involved in uncontested divorce proceedings in both Hamilton and Waterloo felt their case had been handled efficiently, some Unified Family Court clients complained of too many adjournments (35% of Unified Family Court clients reported two or more adjournments, compared to 9% of Waterloo clients) and too many court appearances (29% of the Unified Family Court clients reported 4 or more court appearances, compared to 12% of Waterloo clients). But the clients who seemed to have experienced the greatest frustration, in both Hamilton and Waterloo were those who had attempted to have a court order enforced.

Although there was some evidence indicating that the fragmented system causes confusion and frustration, it seems that some clients experience confusion and frustration regardless of the structure of the court system. Clients who are represented tend to find the court experience less confusing, particularly, if in the opinion of the client, the case was

managed well by the lawyer. Frustration was more evident among clients reporting "inefficient" handling of their cases -- including adjournments, multiple-court appearances and consequent delays.

The court can control the efficiency with which a case is handled to some extent. Indeed, the fixed date system used by the Unified Family Court attempts to do just that. But while lawyers might be expected to assume responsibility for explaining the court process to their clients and keeping them informed, this was found not always to be the case. The court too, has a role to play in this regard, particularly for unrepresented clients. That is, by simplifying the rules and procedures, the Unified Family Court has assumed some responsibility in this area. An intake and information service could inform clients about court procedures, as well as informing them of the various resources available. This service (as recommended by the Law Reform Commission and suggested by clients and community agencies) would help to make more efficient and effective use of court resources, and would reduce the confusion and frustration.

Legal Costs

The court proposed to reduce legal costs to clients by resolving all related issues in a single proceeding through settlement rather than adjudication and by using simplified and streamlined procedures.

Clients interviewed in both Hamilton and Waterloo were asked about the legal costs of their recent court actions (Table 19). There were no significant differences in the costs reported, though it should be noted that 73% of the

Hamilton clients were involved in contested cases, compared with only 28% of Waterloo clients. When asked to rate the costs according to the amount of legal services received, again no significant differences were noted; 44% of the Waterloo clients and 43% of Hamilton clients rated the costs as too high; 50% of Waterloo clients thought the costs were reasonable, compared with 43% of Hamilton clients; but 8% of the Hamilton clients thought the costs were low.

Hamilton lawyers were asked to compare the legal costs of a Unified Family Court action with a comparable action in a non-unified court system. The majority rated their fees as lower for both contested and uncontested actions at the Unified Family Court, as shown below.

Costs are:	Contested Actions		Uncontested Actions	
	Number	%	Number	%
greater at Unified Family Court	5	8.3	6	10.7
less at Unified Family Court	39	65.0	31	55.4
no difference	16	26.7	19	33.9
no opinion	8		8	

Data provided by the Ontario Legal Aid Plan indicate that the average Legal Aid cost per case, for divorce and "other domestic", was less in the Unified Family Court than in the existing court system in Waterloo (Table 20). While the average cost per Legal Aid case in Waterloo is significantly higher than the provincial average (a result which we are unable to explain), the Unified Family Court average is lower than the provincial

average. In fact, the average cost per Unified Family Court divorce is almost \$80.00 lower than the average cost per divorce in Hamilton prior to the Unified Family Court. These findings are noteworthy, in view of the fact that as reported earlier, more issues were resolved in Unified Family Court cases than in cases brought before the courts in the Waterloo family (non-unified) court system.

It would seem reasonable to assume that if the average Legal Aid cost per case was lower in the Unified Family Court then so was the average legal cost paid by the individual litigant -- an assumption supported by the results of the legal survey reported above.

As reported in the last Chapter, more contested divorces were settled in the Unified Family Court at a faster rate than in the Supreme Courts in Waterloo or in Hamilton prior to unification. These Legal Aid data support the assumption that more expeditious conclusions also reduce legal costs.

Satisfaction with the Court Outcome

Through its ability to resolve all related issues in one proceeding, the use of simplified procedures and a variety of dispute resolution techniques to facilitate settlement, the Unified Family Court attempts to provide clients with an informed result which is comprehensive, equitable, understandable and durable.

Ninety-five per cent of the lawyers reported that families are better served in a court with unified jurisdiction and 75% thought that the Unified Family

Court produces a more informed result.

Representatives of ten community agencies were unanimous in their support of the Unified Family Court, some respondents stated that an informed result is more likely because of the comprehensive services offered by a Unified Family Court.

Although Hamilton clients reported being no more satisfied with the court outcome than Waterloo clients (59% vs 58% respectively), Unified Family Court judges were rated as being more concerned about the case than Waterloo judges (Table 21). But most clients in both Hamilton and Waterloo felt that the judges were concerned about the outcome for the children.

Unified Family Court clients gave various reasons for their assessments. Those (62%) who rated the judges as "concerned", commented that -- the judges had been helpful, kind and treated them in a dignified manner (11%); the judges were fair and impartial (15%); the judge had listened to them, asked questions and explained his decision (13%) and, the judges showed their "obvious" concern for the children (23%). One client commented: "they (the judges) understand their purpose well, they always show that their primary concern is for the children". Clients who viewed the judge as neither concerned nor unconcerned were usually parties to an uncontested action and saw no need for concern. Those (30%) clients who thought the judge was not concerned said -- he didn't look at all the facts (12%); was concerned only with the money issue and was not concerned with who was at fault (5%); that he was biased towards women (5%) or, that he had been rude, bored or had treated the client in an undignified manner (8%). Not

surprisingly, there was a positive correlation between the clients' assessment of the concern demonstrated by the judge and the clients' satisfaction with the court outcome.

Thus, findings from the interviews indicate that whether it was by settlement or adjudication, the majority of clients view their court outcome as satisfactory. Clients who felt the judge had handled the case "in a concerned and just manner" were more satisfied with the outcome.

Very few decisions were appealed in any of the samples examined. Of the 160 adjudicated cases in the Hamilton sample prior to unification, 13 decisions (8%) were appealed (6 decrees nisi, 7 DWCMA orders). None of 83 Unified Family Court decisions were appealed, and only two (5%) of the 44 Waterloo decisions were appealed (2 decrees nisi).

It was assumed that if clients were able to settle their disputes, they would be more satisfied with the outcome and the resulting court order would thus be more durable (i.e., would not require enforcement or variation, other than changes agreed to by the parties). But as reported previously, the findings do not support the assumption that clients are more satisfied with the terms of a settlement than a judgement.

Nevertheless, the samples were checked for subsequent enforcement and/or contested variation proceedings for varying lengths of time after the order, as a measure of "durability". Since the Hamilton samples prior to unification were commenced between July 1, 1974 and July 1, 1977, the

follow-up period for these cases is much longer than for either the Unified Family Court or Waterloo samples. (The average follow-up period of a pre-unification divorce is 21 months, compared with an average follow-up of 8 months for a Unified Family Court divorce. This difference must be considered in interpreting the number of events (eg., enforcements) occurring during the follow-up periods of each sample group.

Twenty-nine (11.5%) of the Hamilton Supreme Court divorce orders were brought before the court for enforcement, compared with 30 (13%) of the Unified Family Court divorce orders and three (2%) of the Waterloo divorce orders. (The actual number of cases in which non-compliance occurred is unknown.) All things being equal, a higher rate of enforcement of Unified Family Court decrees nisi might be expected since approximately 20% of all maintenance orders under The Divorce Act are paid into the Unified Family Court; any default on these orders would have been enforced automatically. But, the data do not reveal any differences among courts. Although the reported data includes enforcement of custody and access orders, these account for less than 5% of all enforcement proceedings.

The enforcement rates of DWCMA orders made in the Unified Family Court and the Waterloo Provincial Court are similar -- 29% and 22% respectively. But, the enforcement rate of DWCMA orders made in Hamilton prior to unification was 52%. This higher rate might reflect the longer follow-up period for the pre-unification sample and the fact that the automatic enforcement programme was operating more consistently during this period.

While 52% of the pre-unification DWCMA orders in Hamilton were enforced,

only 9% of the orders for support and/or custody made in a superior court in Hamilton during the same period were enforced; this difference may be due to the Provincial Court's jurisdiction over enforcement. Thirty-five (23%) of support and/or custody orders (civil actions excluding divorce) made in the Unified Family Court were enforced compared with 12 (21%) of similar orders made in the Waterloo Court system.

Thus there are no significant differences in enforcement rates (Table 22) between Unified Family Court orders and orders made in the Waterloo courts. Any observed differences between enforcement rates (DWCMA and civil actions excluding divorce) in Hamilton before and after unification may be attributed to:

- the greater likelihood of a Provincial Family Court or Unified Family Court support order being enforced because of the jurisdiction and the automatic enforcement programmes in these courts
- the longer follow-up period of pre-unified Hamilton cases

Although the number of orders enforced may not be a reliable measure of the actual extent of non-compliance, it appears there are no significant differences in enforcement rates.

One problem of the fragmented system in Ontario, is the inability of the Provincial Family Court, which has jurisdiction to enforce all support orders, to vary the orders made in a higher court. Not only is this confusing, frustrating and costly for the parties, but it also compels the

Family Court to enforce a maintenance order that may have become unreasonable due to a change in circumstances.

As reported earlier, half of the orders enforced in the Waterloo Provincial Family Court are superior court orders. The ratio of variation to enforcement proceedings in the Waterloo court is 1:7. However, in the Unified Family Court, which has jurisdiction to vary all family court orders, the ratio is 1:4. We assume that the difference in ratios between the two courts can be attributed to the comprehensive jurisdiction of the Unified Family Court and, that many of the superior court orders brought before the Waterloo Provincial Family Court for enforcement should be varied.

A variation proceeding does not necessarily indicate that the original order was not satisfactory. Many of these proceedings are uncontested; both parties agree that the order should reflect a change in their circumstances. However, a contested variation proceeding may indicate the parties' subsequent inability to resolve a change in circumstances. With respect to orders made under the DWCMCA, applications were filed to vary 47% of the orders made in Hamilton prior to unification, 24% of the Unified Family Court orders and 14% of the Waterloo orders. However, variation proceedings were contested in only 7%, 5% and 2% of these groups respectively, indicating no significant differences (Table 23).

Contested applications to vary divorce decrees were brought in 3.6% of the Hamilton Supreme Court divorce actions, 1.7% of the Unified Family Court divorce actions and 1.2% of the Waterloo Supreme Court divorce actions --

again, indicating no differences. Divorce actions that had been contested were more likely to be enforced and varied than were uncontested divorces.

With respect to other civil actions, contested variation proceedings were commenced in only one (4%) of the 23 superior court cases in the Hamilton sample prior to unification, in 2.6% of the 153 Unified Family Court cases and in 5.2% of the 58 Waterloo cases.

In summary:

- Almost all lawyers and social service professionals surveyed think that families are better served in a court with unified jurisdiction. With its various social and legal services, the Unified Family Court was considered to be providing families with a more informed result.
- Unified jurisdiction has facilitated variation proceedings in those cases in which non-compliance is due to a change in circumstances.
- Unified Family Court clients were no more satisfied with the result than clients in a non-unified family court system.
- Most Unified Family Court clients thought the judges were concerned with their cases. Those clients who rated the judge as concerned also tended to be more satisfied with the outcome. Judicial qualities viewed as important were: impartiality, compassion and dignity, ability to listen and explain decisions to clients, and most important, concern with the outcome for the children.
- Unified Family Court orders appear to be only as durable

as similar orders made in other courts.

Alleviating Pain and Bitterness

Through diversion from or de-emphasis of the adversary process, the Unified Family Court hoped to help parties resolve their disputes as expeditiously and amicably as possible, thus alleviating some of the pain and bitterness thought to be exacerbated by the traditional adversary process.

Lawyers were asked to assess the statement that "the procedures and practices of the Unified Family Court result in a less adversarial approach". Most (63%) agreed with this statement (16.4% "strongly" agreed); 23.3% had no opinion and only 13.7% disagreed (1.4% "strongly" disagreed). Although some lawyers were concerned about the effects of de-emphasizing this traditional approach to dispute resolution, most lawyers felt it had worked to the benefit of families.

Of the 10 community agencies surveyed, 2 thought that the adversarial process seemed as prevalent in the Unified Family Court as it had been in the non-unified court system, and 5 felt unable to comment on this question. Three agencies felt that the social services were helping to de-emphasize this approach, but some social service professionals commented that the court could do more to de-emphasize the "win/lose" concept in adjudicated custody disputes. They felt that more emphasis should be placed on the importance of the role played by the non-custodial parent; instead of asking "who is the best parent?", the court should focus on the strengths and capacities of both parents to meet the needs of the child. They suggested

that even at the trial stage, judges should encourage parents to use counselling services to help them understand the needs of their children and how as parents, they can continue to meet those needs.

From clients' responses, it seems the "win/lose" concept was as prevalent among Hamilton clients as Waterloo clients. Clients were asked to assess their own satisfaction and that of the other party with the court outcome. Clients who were satisfied with the outcome were more likely to report that the other party was dissatisfied; conversely, those who were dissatisfied more often reported the other party to be satisfied (Table 24). Some Unified Family Court clients described themselves or their spouses as the "winners" or the "losers", in spite of the fact that almost 80% "settled" their disputes. Perhaps if more clients felt they had actually participated in the settlement process, or if more of these clients had been referred to the Conciliation Services (only 10% were referred for conciliation and another 10% for investigation of a custody/access dispute), the win/lose feeling might have been less prevalent.

The assumption that an expeditious conclusion will reduce the pain felt by the parties receives some support from both Hamilton and Waterloo clients; 44% of the Hamilton clients and 23% of the Waterloo clients commented that the speed with which the courts handled the case is important. Most felt that the faster the case is handled the less painful the process. In the words of one Unified Family Court client, "the faster you can get things settled, the better...more time creates bitterness and confusion".

Reducing the Delay

The delay experienced by families in resolving their disputes through the courts was thought to be one of the major problems in the existing court system. The Hamilton Unified Family Court proposed the use of a fixed date system and various dispute resolution techniques, as means to reducing the delay.

The time expired from the commencement of an action until its conclusion was selected as the measure of "delay".

No differences were found with respect to the speed with which the various courts disposed of charges laid under the DWCMA. Prior to unification, the Provincial Family Court in Hamilton disposed of these matters in an average of 62 days; the same type of action took an average of 59 days from commencement to conclusion in the Unified Family Court and 54 days in the Provincial Family Court in Waterloo.

However, the Unified Family Court disposed of divorce actions significantly faster than either the Hamilton or Waterloo Supreme Courts. The average times for contested divorces, from the filing of the petition until the final disposition, were: Hamilton Supreme Court -- 421 days; Waterloo Supreme Court -- 373 days; Unified Family Court -- 204 days. For uncontested divorces, the average times were: Hamilton Supreme Court -- 176 days; Waterloo Supreme Court -- 146 days; Unified Family Court -- 94 days (Table 25).

Though other civil actions (excluding divorce) were disposed of more rapidly in the Unified Family Court than they had been in Hamilton superior courts, the Waterloo Courts disposed of similar actions somewhat (but not significantly) faster than the Unified Family Court. This "no difference" finding may be due to several factors including:

- an increase in the number of days scheduled for the hearing of matrimonial motions in the Waterloo County Court during the data collection period
- the use of pre-trial conferences on the first appearance day in all defended matrimonial matters in the Waterloo courts
- the availability of conciliation counselling at the Waterloo Provincial Family Court

Regardless of the fact that the Unified Family Court concluded many matters faster than did the Waterloo courts, more Hamilton clients reported that the delay was harmful in some way (41% vs 28%). Apparently, what constitutes an "unacceptable" delay varies from client to client and place to place; it is a purely subjective judgement.

Representatives from two community agencies expressed concern that juvenile matters seemed to have a "lower status" in the Unified Family Court than they had had in the Provincial Family Court. If there has been any change in the handling of juvenile matters, it has not been reflected in the speed with which these matters are disposed. Data provided by the Justice Statistics Division of Statistics Canada indicate that the average time from the date the charge was laid until the date of final disposition has

decreased in Hamilton. Comparison of the last six months of 1976 (Provincial Family Court) with the last six months of 1978 (Unified Family Court) in Hamilton, shows a reduction in the average time for disposition of juvenile cases, of from 74 to 54 days. Similar data from the Waterloo Family Court show an increase in the average time for disposition, from 61 days in 1976 to 80 days in 1978.

Some lawyers surveyed (30%) believed that cases dealing with the placement of children were not dealt with as expeditiously as possible. Since most of these cases require social services and may require independent legal representation for the children, the court must have adequate legal and social resources available. Lack of social services has been identified as a problem by both lawyers and social service professionals.

When asked whether the waiting period for a trial date was satisfactory, lawyers were almost evenly divided in their responses, between "satisfactory" and "unsatisfactory", as shown below:

very satisfactory	- 6.8%
satisfactory	- 40.5%
no opinion	- 6.8%
unsatisfactory	- 25.7%
very unsatisfactory	- 20.3%

At the time of this survey, there were only three judges at the Unified Family Court; one-day trials were being scheduled six months off and there was an eight month wait for three consecutively scheduled trial days. (The

court has a "standby" list so that when a scheduled trial "collapses" another can be put in its place; therefore, the actual time until trial was often less than that reported above.) The addition of a fourth judge reduced the waiting time; one-day trials were scheduled four months off and three consecutive trial days were scheduled five months off.

Summary

Although divorce actions were concluded significantly faster in the Unified Family Court than in the non-unified court system, there were no differences in concluding other kinds of actions. It appears that the fixed date system and the various dispute resolution techniques together, contribute to bringing about a more expeditious resolution. However, some clients, lawyers and social service professionals were concerned with delays experienced in the resolution of some matters. But, it must be left to the court and others to determine what constitutes "unacceptable" delay, particularly in cases dealing with the placement of children.

Reducing the Costs to the State

As noted by the Law Reform Commission of Canada, a system of unified family courts that includes provision of or access to support services, would not necessarily reduce the financial cost to the state. Although the duplication of effort by judges and court administrators in the existing system might be alleviated by a unified family court system, the provision of support services deemed necessary (not only by Law Reform Commissions but by the judges, social and legal service professionals and families in Hamilton), may result in additional costs to the state. Whether the

benefits to families and the state (potential and realized) justify the costs, is a question that must be answered by the government.

However, as reported earlier, the data (provided by the Ontario Legal Aid Plan), are promising in terms of reduced costs to the state. The average cost of a Unified Family Court case to the Plan was less than the average cost per case in the comparison district of Waterloo, or elsewhere in Ontario -- dramatically so in divorce matters.

Preserving and Strengthening the Family

While at one time, preserving and strengthening the family was accomplished by helping couples to maintain or restore their marriages, many social service professionals now believe that they can be most helpful in strengthening the family by assisting the spouses to conciliate their differences, so that they can continue to fulfill their responsibilities to each other and their children as members of restructured families.

As already mentioned, the procedures and services of the court were not designed to promote reconciliation, although the Hamilton Unified Family Court retains reconciliation as an objective. The major function of Conciliation Services is the conciliation of support, custody and access disputes.

If indeed the court and its services are strengthening families by helping the parties to recognize and accept their responsibilities to one another

and to their children, attainment of this objective might be reflected in (1) the parties' willingness to settle their disputes (although parties often "settle" their disputes "unwillingly") and (2) the degree to which the parties comply with the terms of the court order.

The settlement rate in Hamilton was greater in the Unified Family Court than it had been in the non-unified court system, but no difference in rates was found between the Unified Family Court and the Waterloo court system. Nor were any significant differences found between these courts when comparing enforcement rates.

The Conciliation Service is, presumably, the only court service expected to play a major role in achieving this objective. (The conciliator attempts to help the spouses recognize the anger and sadness they are feeling, but to set these feelings aside, and focus on constructive ways of handling the problems which require resolution, not only within the conciliation sessions but after, as issues continue to arise.) However, the majority (75%) of conciliation clients interviewed reported that this service had not changed the way in which they subsequently made decisions that affected the family or their children.

First, it is obvious that this objective is very difficult to measure; the measures of "settlement rates" and "enforcement rates" may not be valid at all. Second, to expect the court to have any significant impact on "preserving and strengthening" the families it serves may be totally unrealistic. It is up to the court to decide what (if any) importance it attaches to this objective and then to determine what resources can be

allocated to its achievement.

Promoting Respect for the Law and the Courts

The Law Reform Commissions assumed that the fragmented court system, with its reliance on the adversary process as the only means of resolving family disputes, bred disrespect for the courts and the law. Since relatively few clients commented on their multiple court use, we are unable to confirm this assumption.

Other measures, however, may reflect clients' respect for the courts. Not surprisingly, the client's assessment of their court experience and of the services provided by their lawyers were related. Thus a negative assessment of legal services may promote a lack of respect for the legal process.

Although most clients felt they would not have been better off without a lawyer, 25% were dissatisfied with the role played by their lawyers. The two most common complaints were that the lawyers escalated the problems between the parties and that they manipulated the court system, causing delays and unnecessary court appearances. It seems reasonable to assume that clients might not respect a court system that they believe can be manipulated by the Bar.

Nevertheless, many comments made by clients indicate satisfaction with the way their cases were handled by the court. The majority of clients reported that the judge, or the court in general, was concerned about their case and was helpful in resolving the issues. It was also suggested (by the Law Reform Commission of Canada) that an expeditious conclusion would promote

respect. Most clients agreed that speed is important; 36% of the clients reported that their cases had been brought before the court "faster than expected", although the same proportion also reported "slower than expected".

The comments of clients more often reflected a lack of respect for the law than for the court. Seventeen clients thought that the "new law" (The Family Law Reform Act) is unfair; 8 because it "favours" one sex over the other and 6 because "fault" is no longer considered. Two clients felt that The Family Law Reform Act encourages couples to separate and another 2 felt that the "archaic" divorce laws need changing.

Asked whether the manner in which the Unified Family Court handles cases has promoted a respect for the court, 47% of lawyers surveyed said "yes"; only 15% said "no", the other 38% had no opinion.

It was assumed that in some cases, non-compliance with a court order may indicate a certain lack of respect for the court. If this assumption is true then the findings do not indicate that Unified Family Court clients have any more (or less) respect for the courts as a result of their experience.

Assessing the impact of their experience in the Unified Family Court on the clients' respect for the law and courts is very difficult. However, the findings do lend some support to assumptions made by the Law Reform Commissions about the effects of delay and the adversarial process on the ways in which clients view the courts.

CHAPTER V

RECOMMENDATIONS

A primary purpose of evaluation research is to provide policy-makers and programme planners with information that will be useful in deciding the future state of the evaluated programme and other similar programmes. A measure of the value of evaluation, then, is the extent to which it helps to answer the important and relevant questions of policy-makers and programme planners. In the course of evaluation, the evaluator necessarily makes judgements about the relative success or failure of a programme and its components, based on predetermined criteria, from the data available. Inevitably too, problems are identified which may "explain" some of the short-comings observed. These judgements -- and the identified problems -- constitute much of the body of this report.

This process -- of making judgements and identifying problems -- leads naturally to suggesting approaches that might be used to alleviate some of these problems. Whether these suggestions are useful, practical or relevant can be judged only by those in a position to implement them, not by the evaluator.

However, the following recommendations are a product of the evaluation process; they derive from data gathered by the evaluator during the first three years of this pilot project. They are presented here with the realization that the Hamilton Unified Family Court project is a radical innovation in the design of alternative legal structures for aiding families seeking legal resolution of disputes, and that the future of unified family

courts may be dependent on this and the other three unified family court experiments. We begin with some recommendations relating to the system as a whole, followed by recommendations relating to specific components and strategies of the project. These recommendations derive from both the strengths and weaknesses in the implementation of the Hamilton Unified Family Court model and are therefore not to be interpreted as criticism of this court.

A: GENERAL RECOMMENDATIONS

The following relate to the Unified Family Court system: their order is no reflection of their perceived importance.

1. Goals and Objectives(13)

- Should be stated clearly and succinctly, prior to initiating the programme.

Though this may appear obvious, in fact, it is rarely done. Clearly stated goals are essential for both programme planning and evaluation. Considerable time was consumed during the first months of the Hamilton project in specifying and clarifying objectives, in order to develop a plan for evaluation. While in the future it will be up to the individual court to determine its specific objectives, these must be congruent and consistent with the overall goals for unified family courts as determined by the government.

- Should be prioritized.

Not all objectives are equally important, either to the "success" of the programme, or to different personnel in the programme. Other objectives are instrumental -- necessary for achieving the goals. Priorizing objectives distinguishes those that are absolutely essential to success from those that would be "good" if achieved; it provides the guidelines necessary for rational allocation of resources.

- Should be shared.

All staff need to understand what the programme is trying to accomplish. All relevant groups, such as the Bar and community health and social service agencies also need a clear understanding of the court's objectives.

2. Strategies

- Should be logically related to objectives.

Sometimes, no strategy is devised for the accomplishment of a stated objective. Example: assuring that "walk-in" clients are referred to the appropriate court services. Other times, strategies are implemented out of expediency without due consideration of how they contribute to the attainment of objectives.

- Should be allocated appropriate and adequate resources for effective implementation.

Even the best designed strategy will be ineffective if not given enough time, staff, support services, etc. Example: conciliation services.

3. Organizational Framework

- Should provide structure and mechanisms for co-ordinating the activities for the various service components.

A seemingly self-evident truth, but one that is sometimes forgotten. Example: the General Advisory Committee was never formed.

- Should prescribe lines of authority and accountability.

Staff should know who they are responsible to and for what; not knowing fosters confusion.

- Should define major tasks and roles of staff.

Staff should be informed of their duties and responsibilities; not knowing fosters anxiety, confusion, and likely results in inefficient use of staff resources.

- Should include mechanisms for communication.

Both court staff and relevant groups in the community (eg., Bar, social agencies) need to be continually informed of progress and changes throughout the programme. Example: the Hamilton court used liaison committees,

advisory committees, newsletters and memoranda.

- Should include information on the court's functioning for administrative decision-making.

Court staff expended considerable time in collecting and tabulating information to meet Ministry requirements, but this information was seldom used by the court. The information system designed by the Ministry should collect and process useful and relevant information for unified family courts; court administrators should be trained to use information systems.

4. Court Personnel

- Should possess, collectively, the full range of knowledge, skills and experience to operate a unified family court.

With jurisdiction over all family matters, a unified family court requires a wider range of expertise than existing family courts. Example: a litigation clerk brought from the divorce section of the County Court provided invaluable expertise to the Hamilton Unified Family Court at the commencement of the project.

- Should be adequately trained.

Even experienced staff need training to prepare for the new roles and responsibilities demanded by new goals and strategies. Non-legal staff (eg., conciliators) need special training in order to work in a court setting.

5. The Physical Plant

- Should be designed to help families maintain their dignity and self-respect.

Example: the waiting room should permit some privacy (by partitioning into small areas, etc.)

- Should provide the basic amenities for the comfort of families.

Many clients often under stress, must wait an hour or more for appointments; some, out of necessity, bring their children with them. A few amenities, such as coffee and soft drink machines, children's books, background music, etc. could make their waiting more tolerable.

- Should provide adequate facilities for informal consultations.

Example: the Hamilton court's clients and counsel appreciated and made extensive use of the small consulting rooms available.

B: SPECIFIC RECOMMENDATIONS

The following relate to specific components or strategies of the Hamilton Unified Family Court.

1. The Pre-Trial Conference

- Clients should be present in the conference room.

Clients should be encouraged to attend and to participate in the settlement process. This would help clients in understanding the pre-trial process and

sharing responsibility for the decisions made.

- If second pre-trial conferences are scheduled, this should be done only at the request of the parties or their counsel.

There was no evidence to indicate that scheduling more than one pre-trial is an efficient or effective practice.

- Sanctions should be applied to counsel who attend the pre-trial conference unprepared.

Judicial time is wasted when counsel attend unprepared -- that is, without valuations, discoveries, etc., or without their clients. Example: the Hamilton court uses costs as a sanction in these situations.

- The relative efficacy of the pre-trial conference should be assessed.

Because of the great importance placed on the pre-trial conference by the court and because the (observed) settlement rate cannot be attributed solely to this process, a controlled experiment to provide more conclusive evidence on the effectiveness of these conferences is needed.

2. Social Services

Although there is some overlap between the previous recommendations and the following recommendations, the importance of social services in the Unified Family Court model warrants further elaboration.

a) Organization

i Planning

- Unified family courts should make extensive use of the expertise of community social services.

In order to design the model most appropriate for the community, planners should consult the social service providers in the community to avoid duplication of existing services and to determine the kinds of services that might be provided most efficiently by community-based agencies. These agencies should also participate in the planning of any new or expanded social services required to meet the needs of the court.

- Should be done in conjunction with the planning of the legal services.

Shared planning is necessary to ensure that all essential services are incorporated in the design of the court at the outset. Without such planning, the entire court services may be based on erroneous assumptions regarding the nature of social services and the availability of social services in the community for court clients.

- Policies and guidelines for utilizing social services should be in place prior to commencement of the court.

Absence of guidelines for the first of the year, created considerable confusion in the use of the Hamilton court's

social services. The task of integrating social services into the court structure can be difficult -- a well-planned service which includes written policies and guidelines will facilitate integration.

ii Autonomy

- The social services should possess a certain degree of autonomy from the court.

There seems to be no simple solution to the issues of accountability and independence of the social services within the court. When (as in the Hamilton court) the conciliators are responsible to the judiciary, they are not able to resist demands made on them by judges (eg., for assessments) even though they may want to spend more time providing other services (eg., conciliation, counselling). Greater autonomy might be possible if funding and supervision of the court's social services were provided by a Ministry other than the Attorney-General.

iii Training

- Court social service staff should be adequately trained for their responsibilities and tasks.

Simply having a professional degree or lengthy experience in another setting is not sufficient preparation for working in a court setting. Social service professionals on the staff of a unified family court need specialized

knowledge of the court system, family law, legal procedures, etc., which can best be provided by the court. Orientation of new staff and on-going in-service training of all staff should receive high priority by the court. Similarly, staff in community agencies taking referrals from the court, should be clear about how their tasks complement or supplement the functions of the court, and have some special understanding of the court.

iv Administrative Support

- Court social service staff should have adequate administrative and clinical support.

Surrounded as they are by legal service professionals, social service staff in a court setting may feel isolated. In order to function effectively they require two kinds of support: first, administrative -- the provision of adequate resources (including secretarial assistance, etc.) to do their jobs, and second, clinical. The latter cannot be provided by other court staff. This support, which could be provided by the Ministry, a community agency, or other appropriate professional, would include supervision/consultation on specific clinical aspects of the conciliator's role and input into any performance appraisal of the conciliator which might be required.

b) Services

i Target Group

- The social services should be available to all court clients who wish to avail themselves of these services, whether involved in a court proceeding or not.

Because of the high number of referrals from the court, the Hamilton Conciliation Services were virtually unavailable to pre-court clients. If the court seeks to divert clients from the court process and serve a preventive role in problems of family disintegration, the logical strategy would be to facilitate access to conciliation and counselling for pre-court clients.

Inadequate resources also prevented accessibility of the services to all clients engaged in court proceedings. The court must have sufficient professional staff to ensure the availability of this alternative to all interested clients.

ii Distinct Services

- A clear distinction should be maintained between voluntary and mandatory services.

Voluntary services (eg., conciliation, counselling) are available at the request of the client and are used on a voluntary basis by the client; mandatory services (investigations, assessments) are ordered by the court. Because the purpose and nature of these two types of service are quite different, we suggest that the use of

separate resources for each is the best way of preventing "role conflict" among professional social service staff and avoiding "role confusion" by lawyers and clients. Regardless of who provides the services, each of these two service types requires its own clearly articulated set of procedures.

iii Intake and Information

- Court intake and information services should be streamlined and professionalized.

The key to making optimal use of both court and community social services is having an experienced professional intake worker. This worker would provide information, help clients to identify and specify problems, and would then be able to refer clients to the most appropriate source of help -- either legal or social. This role requires great skill in interviewing along with detailed knowledge of both the court and community resources.

iv Assessments

- The court's expectations for assessments should be clearly specified and uniform reporting methods adopted.

Lack of specificity regarding the kinds of information required and the lack of standardized reporting of information can result in assessments of questionable utility and reliability. Joint responsibility for the development of reporting standards should be assumed by

the court and by those conducting the assessments, whether they be court staff or community professionals.

v Conciliation and Counselling

- Cases for referral to community conciliation and counselling services should be assessed by a social service professional at the court, prior to referral.

Litigants unmotivated for counselling may consent to a referral for counselling believing that it may result in a more favourable court disposition. Such referrals are often ineffective and result in an inefficient use of counselling resources. Initial "screening" at the court would provide more efficient use of these services.

- Court procedures should encourage the use of the various social remedies available to families.

Although procedures should exist to minimize "unmotivated" counselling referrals, the court should encourage the voluntary use of these services. The inclusion of social services in the rules and procedures, would both legitimize and encourage the use of conciliation and counselling services.

3. Integration of the Social and Legal Arms of the Court

Since both legal and social services are essential for the realization of the goals of a unified family court, it is important that they are integrated. That is, they must work together in the service of clients; the

functions of each service should complement and support the functions of the other. This requirement holds regardless of whether the social services are provided mainly within the court, mainly by community agencies, or by both court and community resources. Thus, to promote maximum integration of the social and legal arms of the Unified Family Court, we recommend that:

- The two arms, social and legal, should be accorded equal status in the court.

Though family disintegration is essentially a social problem, clients of family courts are usually seeking legal solutions to these problems. However, both legal and social interventions may be required and both must be available and accessible to all the court's clients. Legal and social professionals then should work as colleagues -- enjoying equal status in the organization, while performing quite different roles and functions. The organizational structure of the court should reflect this equality of status, for example, by ensuring that both groups have input into major planning and policy decisions. (This is not to suggest that both arms must be represented for example on every committee; each arm has its specialized tasks and unique problems that do not concern the other.) Equality of status cannot easily be formalized or institutionalized; it is basically an attitude of mutual respect derived from the recognition and appreciation each has for the other, based on their respective contributions in achieving their common goal.

However, organizational structures can either facilitate or hinder the fostering of these attitudes.

- The professional community should be prepared for the introduction of a unified family court.

Through seminars, workshops, etc., lawyers, social workers and other interested professionals in the community should have ample opportunity to discuss the objectives, structure, strategies, etc., of the Unified Family Court, in order to anticipate changes in their roles vis-a-vis this new court.

- Conferences and workshops should be held at regular intervals to explore solutions to problems of mutual concern.

Such conferences would serve two main purposes: first, to find better solutions to common problems (eg., the enforcement of orders) and second, to provide opportunities for developing co-operative inter-disciplinary working relationships. If unified family courts are introduced in other Ontario communities, conferences should be initiated by the government to provide opportunities for the continuing education of the professionals engaged in this field. However, local courts should also initiate similar conferences in order to discuss problems of particular importance at the local level and to further inter-disciplinary co-operation.

- The professional community should be informed of changes affecting the operation of the court.

Lawyers and social service workers in the community that serve the court's clients should be kept informed of changes in the court's policy or practice. Mechanisms for facilitating this communication might be an inter-disciplinary advisory committee and/or a monthly newsletter. Because of the many and frequent changes occurring in new programmes, regular communication with this external community is necessary to prevent misunderstandings that can lead to confusion and conflict between the court and its users.

4. Enforcement Services

- The Unified Family Court should take primary responsibility for the enforcement of its maintenance orders.

The problem of enforcement of court orders has been and continues to be a chronic problem in all family courts. While there may be no effective techniques currently available for ensuring efficient and effective enforcement of court orders, we hope that attention will be given to this problem and that every possible effort will be made to relieve clients of the aggravation of having to pursue on their own the enforcement of orders made in their favour.

C: ISSUES FOR CONSIDERATION

As may already be evident, research findings often raise as many issues as they address. Along with the objective findings, it is inevitable that extensive contact with the experimental project leads the researcher to form subjective impressions. The findings and impressions have resulted in the identification of several issues for consideration:

- The Hamilton model assumes that the avoidance of adjudication is always as beneficial for the parties and for the children as it is for the court; thus, the model is designed primarily to settle disputes. Intuitively this assumption is valid. However, the findings indicate that from the parties' perspective, adjudication may in some cases, be a more satisfactory means of concluding the matter than settlement. We are not suggesting that settlement should not be a major objective. Indeed, parties should be offered every opportunity and assistance in settling their cases. Further research might be able to determine the key elements necessary for the effective use of the court's settlement techniques. Identification of these elements would permit more efficient use of court resources.
- It is assumed that having to initiate separate proceedings to resolve related issues, as found in the existing "non-unified" system, is not in the best interests of families. While the consolidation of all related issues

in a single proceeding can prevent the kinds of abuse that occur when these several issues are brought before the court in separate proceedings (eg., in order to secure an advantage for one of the parties) encouraging parties to dispose of all issues at the same time may, in some instances, place undue pressure on the family.

- The expeditious conclusion of matters before the court is deemed to be an important objective. The findings support the importance of this objective and indeed, they indicate that the Hamilton court is effective in this regard. The only concern here is that court procedures should be sufficiently flexible to prevent conclusion of a proceeding merely for the sake of convenience -- without the parties being ready. (We are not suggesting nor is there any evidence that the Hamilton court does this.) We suggest only that the goals of efficiency be kept in perspective; that efficiency is not obtained by compromising other objectives.

FOOTNOTES

- (1) Matters commenced under The Divorce Act, Infants Act, Married Women's Property Act, Partition Act, Judicature Act, Annulment of Marriages Act, Deserted Wives and Children's Maintenance Act and Family Law Reform Act.
- (2) The data were coded from court files by the researcher, by two part-time research assistants and by four summer students -- all over the course of the project. Reliability of the coded data was checked at various points throughout the data collection period.
- (3) Kitchener-Waterloo was chosen as a comparison judicial district because of its physical proximity to Hamilton-Wentworth, thus facilitating the collection of data, and although serving a small population, the two judicial districts are not dissimilar.
- (4) The results of this study were presented in a report submitted to the Ministry of the Attorney-General and the Department of Justice in March, 1980.
- (5) Married Women's Property Act, Partition Act, Infants Act, Judicature Act, Family Law Reform Act and Annulments of Marriages Act.
- (6) That is, the action selected for study.
- (7) One judge convenes pre-trial conferences for one entire day each week. Days were randomly selected for observation over a one year period from September, 1978. Data collection was terminated after the researcher had observed 100 pre-trial conferences.
- (8) Excluded are those cases in which a pre-trial conference was scheduled but not conducted because a settlement was reached prior to the conference. There was a total of 13 such cases on the days the 100 conferences were observed.
- (9) This section summarizes and updates a comprehensive Report on Conciliation Services submitted in March, 1980 to the Ministry of the Attorney-General (Ontario) and the Department of Justice (Canada).
- (10) Results of the St. John's Unified Family Court project with a full-time crisis intervention worker may provide information on the effectiveness of such an intervention.
- (11) The importance of an intake service is supported by the findings of a study on the Conciliation Project in the Provincial Family Court in Toronto (Irving, 1980).

- (12) To ensure more complete and reliable data we recommend that the court record the nature of the intervention provided by the Official Guardian's agent.
- (13) In this context the term "goal" is used to refer to the general over-all aims of a programme; the term "objective" refers to more specific statements of desired change or outcome.

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TABLES AND APPENDICES

FIGURE 1: Personnel of the Unified Family Court at the time of commencement and termination of the three-year period

	As of Commencement (July 1, 1977)	As of Termination (July 1, 1980)
Judiciary	3 full-time judges	4 full-time judges
Administration	General Supervisor*(1) Court administrator and Justice of the Peace(1) Justice of the Peace and intake worker(1)	Court administrator(1) Deputy administrator and Justice of the Peace(1)
Conciliation	2 court conciliators 1 intake worker (a clerk secretary)	2 court conciliators 1 temporary student intake worker
Secretarial	3 judges' secretaries (each performing additional duties) 1 administrators' secretary	2 judges' secretaries 1 administrators' secretary
Bookkeeping	1 bookkeeper 1 assistant bookkeeper	1 bookkeeper 1 assistant bookkeeper
Enforcement	2 family records clerks 1 automatic enforcement clerk	2 family records clerks
Clerical	3 litigation clerks 1 juvenile clerk	4 litigation clerks 1 juvenile/wardship clerk
Court Reporters	3 court reporters	3 court reporters (1 freelance reporter as required)
Court Scheduling	3 court attendants	1 trial co-ordinator 4 court attendants
Reception	1 receptionist 1 commissionaire	1 receptionist 1 commissionaire
Security	1 police officer	1 police officer

* Intended to be full-time for first few months, part-time thereafter.

FIGURE 2: Organization chart of Unified Family Court at Hamilton

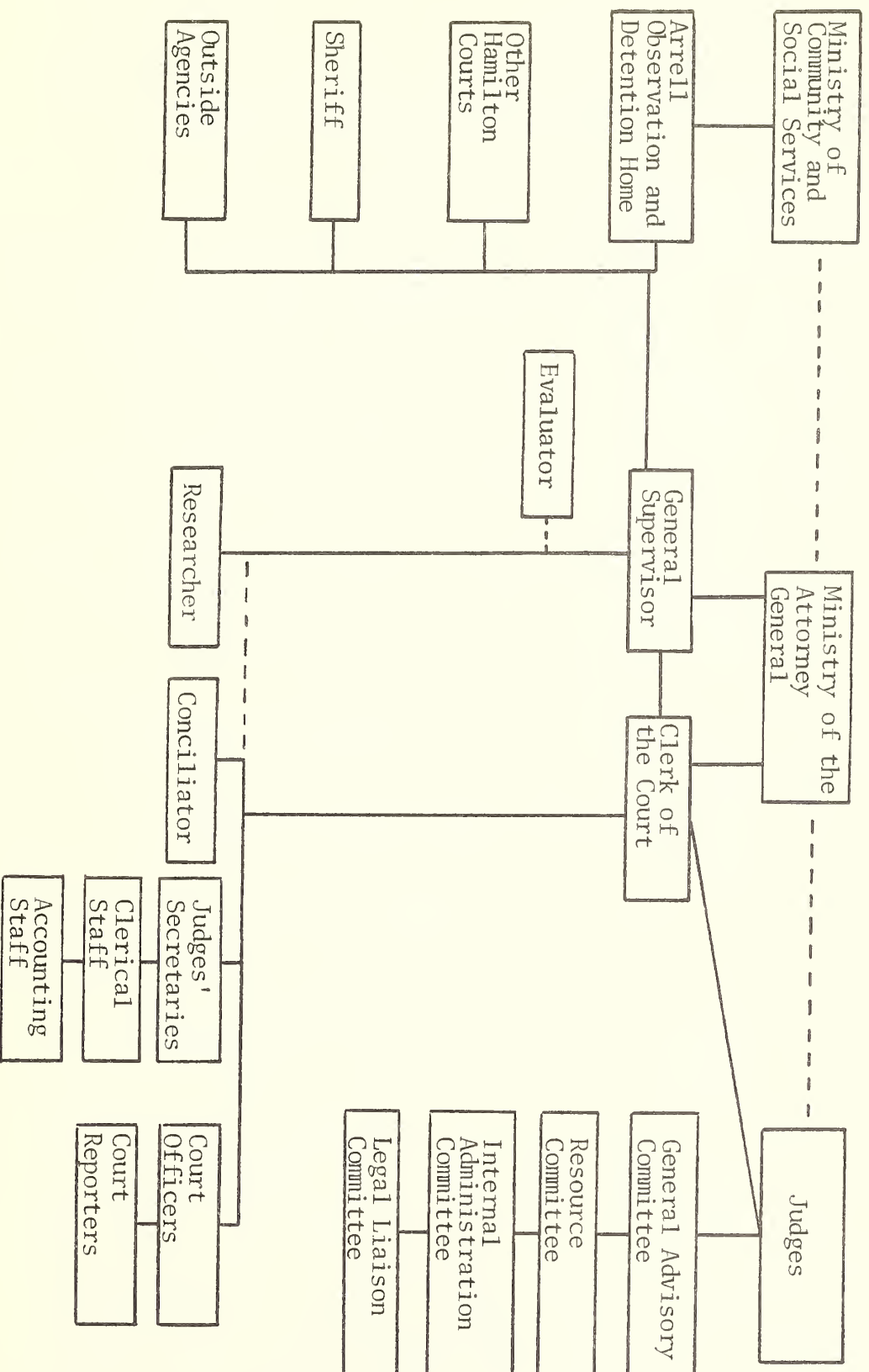


TABLE 1: Samples of cases commenced in the Judicial Districts of Hamilton-Wentworth and Kitchener-Waterloo*

	<u>Population Size</u>	<u>Sample Size</u>
(1) Proceedings under the DWCMA in the Provincial Court (Family Division)		
Hamilton-Wentworth	1,729	278
Kitchener-Waterloo	243	75
(2) Civil proceedings (divorces excluded)		
<u>Hamilton-Wentworth</u>		
Supreme Court	206	44
County Court	153	31
Surrogate Court	166	41
	<u>525</u>	<u>116</u>
<u>Kitchener-Waterloo</u>		
Supreme Court	85	16
County Court	201	41
Surrogate Court	81	23
Provincial Family Court	232	45
	<u>599</u>	<u>125</u>
(3) Divorces commenced in the Supreme Court		
<u>Hamilton-Wentworth</u>		
Contested	529	240
Uncontested	3,231	120
	<u>3,760</u>	<u>360</u>
<u>Kitchener-Waterloo</u>		
Contested	306	184
Uncontested	1,855	66
	<u>2,161</u>	<u>250</u>

* In Hamilton-Wentworth the cases were commenced between July 1, 1974 and June 30, 1977. In Kitchener-Waterloo the divorce actions were commenced between July 1, 1976 and December 31, 1978; DWCMA actions were commenced between July 1, 1977 and March 31, 1978 (until the act was repealed); all other actions were commenced between July 1, 1977 and December 31, 1978.

TABLE 2: Average legal aid costs per case*

			<u>Number of Cases</u>	<u>Average Cost Per Case</u>
I Accounts paid April 1, 1976 - March 31, 1977				
<u>Supreme Court</u>				
Divorces:	Hamilton		407	512.81
	Waterloo		230	526.51
Other domestic:	Hamilton		40	557.01
	Waterloo		23	606.13
<u>County Court</u>				
Other domestic:	Hamilton		23	286.88
	Waterloo		18	212.04
<u>Provincial Family Court</u>				
Other domestic:	Hamilton		499	172.94
	Waterloo		93	170.94
II Accounts paid January 1, 1978 - December 31, 1978, on certificates issued after July 1, 1977 (Waterloo only)				
<u>Supreme Court</u>				
Divorces			176	649.95
Other domestic			69	575.51
<u>County Court</u>				
Other domestic			48	373.47
<u>Provincial Family Court</u>				
Other domestic			257	324.67

* Statistics provided by the Office of the Director, Ontario Legal Aid Plan

TABLE 3: Results from 100 pre-tried cases

Partial settlement at pre-trial		8
Consent order at later date	6	
Adjourned sine die	1	
Trial (half day)	1	
Full settlement at pre-trial		38
Consent order at pre-trial	23	
Consent order at later date	13	
Discontinued	1	
Adjourned sine die	1	
No settlement at pre-trial		52
No trial: consent order	16	
discontinued	4	
adjourned sine die	10	
Trial: one hour	2	
half day	5	
full day	7	
one and a half days	2	
two days	3	
four or more days	2	
Trial pending	1	
Pre-trial pending		2

TABLE 4: Arrears at the time when enforcement proceedings were commenced under The Family Law Reform Act

<u>Arrears</u>	<u>Number of Cases</u>	<u>% of Cases</u>
Less than \$100	11	9.2
\$101 to \$300	34	28.3
\$301 to \$500	17	14.2
\$501 to \$750	17	14.2
\$751 to \$1,000	9	7.5
\$1,001 to \$1,500	8	6.7
More than \$1,500	24	20.0

TABLE 5: Outcome of referrals for conciliation by reason for referral

<u>Reason for Referral</u>	<u>Number of Cases</u>			<u>Nature of Agreement</u>
	<u>Total</u>	<u>No Agreement</u>	<u>Agreement</u>	
Reconciliation	12	2	10 (83%)	Agree to reconcile Agree to separate Agree to counselling referral 3
Maintenance	136	33	103 (76%)	Written (minutes of settlement) Verbal Agree to reconcile Agree to budget counselling referral 4
Custody/Access	110	44	66 (60%)*	Partial or interim agreement Full agreement 16 50
Criminal Offence	4	1	3 (75%)	Agree to counselling referral 3
	262	81	181 (69%)	

* This settlement rate is comparable to the 68% agreement rate of mainly custody and access cases reported in the preliminary findings of a study evaluating the Conciliation Project in the Provincial Family Court in Toronto (Irving, 1980).

TABLE 6: Service to 311 adult clients by Legal Aid Duty Counsel* from December, 1978 to April, 1979

<u>Type of Service</u>	<u>Number of Cases</u>	<u>Percent of Total Cases</u>
Information and advice		
Criminal offence	26	8%
Separation	26	8%
Divorce	43	14%
Support	68	22%
Custody	64	21%
Property	23	7%
Arrears	34	11%
Unknown	23	7%
Information on court procedure	77	25%
Advice regarding pending hearing	19	6%
Appearance in court with client	48	15%
Completion of Legal Aid applications	59	19%
Completion of court forms	22	17%
Referrals to social agencies	2	.6%

* Clients were provided with more than one service in many cases. Because of the unreliability of the data referred to in the text, we speculate that each of these services was provided more frequently than indicated on the forms completed by duty counsel.

TABLE 7: Number of cases in which legal representation was appointed for children Rule 35, The Unified Family Court Act or Section 20, The Child Welfare Act

<u>Period</u>	<u>Deserted Wives and Children's Maintenance Act*</u>	<u>Proceeding</u>				<u>Total</u>
		<u>Infant's Act*</u>	<u>Family Law Reform Act</u>	<u>Divorce Act</u>	<u>Child Welfare Act</u>	
July '77 - Dec. '77	1	0	--	0	1	2
Jan. '78 - June '78	1	2	3	0	1	7
July '78 - Dec. '78	--	1	4	1	1	7
Jan. '79 - June '79	--	--	3	2	4	9
July '79 - Dec. '79	--	--	6	3	12	21
Jan. '80 - May '80	--	--	7	4	13**	24
	2	3	23	10	32	70

* Repealed March 31, 1978

** As of February 1, 1980, all orders for legal representation in protection matters have been made under The Child Welfare Act.



TABLE 8: Claims made in divorce actions commenced in
Hamilton-Wentworth (H-W) and Kitchener-
Waterloo (K-W)

<u>Claims</u>	Unified Family Court	<u>Contested</u>		<u>Uncontested</u>	
		H-W	Supreme Court K-W	Unified Family Court	Supreme Court H-W K-W
Divorce only	3%	7%	2%	48%	41% 44%
Divorce plus:					
support and/or custody only	44%	93%	74%	41%	59% 48%
property* (and other)	53% 100%	-- 100%	24% 100%	11% 100%	-- 100% 7% 100%

* Includes exclusive possession, declaration of ownership, division of family and non-family assets.



TABLE 9: Types of claims in divorce actions commenced in Hamilton-Wentworth (H-W) and Kitchener-Waterloo (K-W)

Issues	Contested		Uncontested	
	Unified Family Court	Supreme Court H-W	Unified Family Court	Supreme Court H-W
Support	96%	91%	37%	39%
Custody/access	82%	76%	46%	56%
Exclusive possession	33%	--	8%	--
Declaration of ownership	15%	--	4%	--
Division of assets	48%	--	3%	--



TABLE 10: Number of issues per action by number of civil actions commenced

<u>Number of Issues Per Action</u>	<u>Number of Actions</u>		<u>Waterloo Court System</u>
	<u>Hamilton Unified Family Court</u>	<u>Pre-Unified Family Court</u>	
one	52 (22%)	83 (72%)	40 (32%)
two	115 (48%)	33 (28%)	62 (50%)
three	42 (18%)		13 (10%)
four	22 (9%)		7 (6%)
five +	7 (3%)		3 (2%)
	—	—	—
	238 (100%)	116 (100%)	125 (100%)

TABLE 11: Types of issues per action by number of civil actions commenced

<u>Types of Issues</u>	<u>Number of Actions</u>		
	<u>Hamilton Unified Family Court</u>	<u>Pre-Unified Family Court</u>	<u>Waterloo Court System</u>
Support	183 (77%)	28 (24%)	80 (64%)
Custody/access	184 (77%)	49 (42%)	84 (67%)
Exclusive possession	53 (22%)	7 (6%)	19 (15%)
Ownership	11 (5%)	8 (7%)	8 (6%)
Partition/sale	36 (15%)	37 (32%)	27 (22%)
Division family assets	61 (26%)	17 (15%)	26 (21%)
Nullity	5 (2%)	3 (3%)	1 (1%)

TABLE 12: Number of actions commenced under The Family Law Reform Act, by Court, in Kitchener-Waterloo*

<u>Issues</u>	<u>Provincial (Family)</u>	<u>Court</u>		
		<u>County</u>	<u>Supreme</u>	
Support	619	198	40	857
Custody/access	629	205	31	865
Exclusive possession	28	96	21	145
Property division	10	200	46	256
Restraining order	57	70	10	137
Total number of actions commenced**	707	332	70	1,109
Average number of actions per month	33.7	15.8	3.3	53

* April 1, 1978 to December 31, 1979

** Litigants may seek resolution of more than one issue in a single action.

TABLE 13: Average number of days expired between commencement of action and first scheduled court appearance (interlocutory motions excluded)

<u>Type of Action</u>	Hamilton		Pre Waterloo			
	Unified Family Court Number of Cases	Days Expired	Unified Family Court Number of Cases	Days Expired		
D.W.C.M.A. *	55	28	275	38	75	29
Divorce: uncontested	120	69	108	159	38	147
contested	200	76	208	415	75	334
All other civil actions	238	47	91	81	117	48

* Repealed nine months after commencement of the project.

TABLE 14: Use of interlocutory motions

	% Cases with Interlocutory Motions		
	Hamilton		
	Unified <u>Family Court</u>	Pre-Unified <u>Family Court</u>	<u>Waterloo</u>
Divorce:			
contested	32%	34%	53%
uncontested	3%	4%	6%
Other civil proceedings	33%	32%	29%

TABLE 15: Average number of adjournments per case

	<u>Hamilton</u>		<u>Waterloo</u>
	Unified Family Court	Pre-Unified Family Court	
DWCMA	1.0	.8	.9
Divorce:			
contested	2.59	data not	.62
uncontested	.61	available	.02
Other civil	1.9	.97	1.04

TABLE 16: Average number of court appearances
per case

	<u>Hamilton</u>		<u>Waterloo</u>
	Unified Family Court	Pre-Unified Family Court	
DWCMA	1.8	1.7	1.7
Divorce:			
contested	2.9	1.7	1.9
uncontested	1.3	1.0	1.0
Other civil	2.2	1.5	1.5

TABLE 17: Settlement rates of disposed contested civil actions

	<u>Hamilton</u>				<u>Waterloo</u>	
	Unified Family Court		Supreme Court		Supreme Court	
	N	%	N	%	N	%
a) Divorces						
Settled	141	71.2	128	58.7	53	74.6
Tried	46	23.2	71	32.6	15	21.1
Other*	11	5.6	19	8.7	3	4.2
	<hr/> 198		<hr/> 218		<hr/> 71	
	<u>Hamilton</u>				<u>Waterloo</u>	
	Unified Family Court		Pre-Unified Family Court		All Courts	
	N	%	N	%	N	%
b) Other civil						
Settled	71	65.1	16	35.6	33	68.8
Tried	23	21.1	8	17.8	7	14.6
Other*	15	13.8	21	46.7	8	16.7
	<hr/> 109		<hr/> 45		<hr/> 48	

* Cases which were dismissed, discontinued or adjourned sine die without a trial.

TABLE 18: Client satisfaction with settlement vs judgement

	Settlement		Judgement	
	N	%	N	%
very satisfied	7	8.3	2	9
satisfied	33	39	11	50
neither satisfied nor dissatisfied	9	10.7	2	9
dissatisfied	25	29.8	1	4.5
very dissatisfied	10	11.9	6	27.3
no response	0		5	
	—		—	
	84		27	

TABLE 19: Legal costs reported by parties to court proceedings in Hamilton and Waterloo

	<u>Hamilton</u>		<u>Waterloo</u>	
	Number	%	Number	%
less than \$300	15	19	2	11
\$301 - \$500	16	20	4	22
\$501 - \$750	15	19	6	33
\$751 - \$1,000	5	6	1	6
\$1,001 - \$1,500	16	20	3	17
more than \$1,500	13	16	2	11
	—		—	
	80		18	

Note: Of the 131 Hamilton clients represented by lawyers, 51 hadn't received a bill (34 because they had Legal Aid). Of the 27 Waterloo clients represented by lawyers, 9 hadn't received a bill (8 used Legal Aid).

TABLE 20: Legal Aid costs

A. Accounts paid between January 1, 1978 and December 31, 1978 on Legal Aid certificates issued after July 1, 1977

	<u>Number</u>	<u>Average cost per case</u>		
		<u>Fees</u>	<u>Disbursements</u>	<u>Total</u>
1) Divorce cases				
Hamilton (U.F.C.)	577	303.40	130.98	434.38
Waterloo (Supreme Court)	176	483.60	166.35	649.95
2) Other domestic civil cases				
Hamilton (U.F.C.)	986	257.80	23.49	281.29
Waterloo Provincial Family Court	257	292.40	32.27	324.67
County Court	48	315.60	57.87	373.47
Supreme Court	69	475.22	100.29	575.51
	<u>374</u>	<u>329.11</u>	<u>48.11</u>	<u>377.22</u>

B. Accounts paid between April 1, 1978 and March 31, 1979*

1) Divorce cases				
Hamilton	292	278.39	123.96	402.35
Waterloo	71	611.20	177.39	788.59
Ontario	6,237	-	-	560.40
2) Other domestic				
Hamilton	470	225.38	20.50	245.88
Waterloo	166	264.46	45.67	310.13
Ontario	13,351	-	-	261.02

* In the Hamilton and Waterloo cases the certificates were issued after July 1, 1977 (this selection criterion assured that all Hamilton cases were commenced in the Unified Family Court). Certificates for the Ontario cases could have been issued at any time.

TABLE 21: Client assessment of the concern demonstrated by judges in unified (Hamilton) and non-unified (Waterloo) courts

1) For the case generally

	Hamilton Unified Family Court Judges		Waterloo Judges	
	N	%	N	%
very concerned	21	18.6	2	5.0
concerned	46	40.7	14	35.0
neither concerned nor unconcerned	26	23.0	6	15.0
unconcerned	10	8.8	13	32.5
very unconcerned	10	8.8	5	12.5
	113	100%	40	100%

2) For children

very concerned	16	21.6	4	15.4
concerned	31	41.9	10	38.5
neither concerned nor unconcerned	17	22.9	5	19.2
unconcerned	7	9.5	6	23.1
very unconcerned	3	4.1	2	7.7
	74	100%	26	100%

TABLE 23: Proportion of support and/or custody
orders followed by variation proceedings

	<u>number of orders</u>	<u>% with application to vary</u>	<u>% with contested application to vary</u>
1) DWCMA orders			
Hamilton Pre-Unified Family Court	210	47%	7%
Hamilton Unified Family Court	42	24%	5%
Waterloo	63	14%	2%
2) Divorce decrees			
Hamilton Pre-Unified Family Court	252	7.5%	3.6%
Hamilton Unified Family Court	229	4.8%	1.7%
Waterloo	177	2.3%	1.2%
3) Other civil orders			
Hamilton Pre-Unified Family Court	23	4%	4%
Hamilton Unified Family Court	153	9%	2.6%
Waterloo	58	14%	5.2%

TABLE 23: Proportion of support and/or custody orders followed
by enforcement proceedings

<u>Type of Order</u>	<u>Hamilton</u>		<u>Waterloo</u>	
	Pre-Unified Family Court	Unified Family Court		
	<u>Number of Orders</u>	<u>% Enforced</u>	<u>Number of Orders</u>	<u>% Enforced</u>
D.W.C.M.A.	210	52	42	29
			63	22
Divorce	252	11.5	229	13
			171	2
Other civil	23	9	153	23
			58	21

TABLE 24: Interview respondent's rating of own satisfaction and perceived satisfaction of other party with court outcome

A. Hamilton Sample

Satisfaction of Other Party

<u>Satisfaction of Interview Respondent</u>	<u>Dissatisfied</u>		<u>Satisfied</u>		<u>Unknown</u>	
	N	Row%	N	Row%	N	Row%
very satisfied	9	(75%)	0		3	(25%)
satisfied	28	(43%)	25	(38%)	12	(18%)
neither satisfied nor dissatisfied	2	(18%)	4	(36%)	5	(45%)
dissatisfied	11	(39%)	14	(50%)	3	(11%)
very dissatisfied	4	(25%)	12	(75%)	0	

B. Waterloo Sample

very satisfied	2	(16%)	1	(33%)	0	
satisfied	7	(44%)	7	(44%)	2	(12%)
neither satisfied nor dissatisfied	1	(50%)	1	(50%)	0	
dissatisfied	0		3	(60%)	2	(40%)
very dissatisfied	0		6	(86%)	1	(14%)

TABLE 25: Average number of days expired from commencement until disposition of an action

<u>Type of Case</u>	<u>Hamilton</u>		<u>Waterloo</u>	
	Pre-Unified Family Court	Unified Family Court	Number of Cases	Average Days
	Number of Cases	Average Days		
DWQMA	278	62	55	59
			75	54
Divorce contested*	210	421	186	204
			89	373
uncontested	114	176	120	94
			40	146
Other Civil Total	90	168	234	122
			114	96
Supreme Court	29	330	-	-
			11	299
County Court	28	103	-	-
			35	77
Surrogate Court	33	81	-	-
			23	81
Provincial Court	-	-	-	-
			45	76

* At the time of data collection, several cases in each sample had not yet been disposed (2 in the Hamilton Supreme Court, 1 in the Unified Family Court and 8 in the Waterloo Supreme Court).

JURISDICTION OF THE UNIFIED FAMILY COURT
UNDER THE FOLLOWING STATUTORY PROVISION:

STATUTES

PROVISIONS

Annulments of Marriage Act (Ontario) (Canada)	All
The Child Welfare Act	Parts II and IV
The Children's Boarding Homes Act	Section 10
Divorce Act (Canada)	All
The Education Act, 1974	Sections 29 and 30
The Family Law Reform Act, 1978	All, except Part V
The Infants Act	All
Juvenile Delinquents Act (Canada)	All
The Marriage Act, 1977	Sections 6 and 9
The Minors' Protection Act	Section 2
The Reciprocal Enforcement of Maintenance Orders Act	All
The Training Schools Act	Section 9

THE COMMUNITY RESOURCES AND THEIR SERVICESADDICTION RESEARCH FOUNDATION

The Addiction Research Foundation clinical team is available for consultation to families, friends, employers and professionals who find themselves in a position of trying to assist a drug dependent person or an alcoholic and to the alcoholic or drug dependent person to assist him/her in finding out where in the community he or she can get help. The clinical staff provide direct therapy service only when it is not available elsewhere in the community.

One clinical staff member is present at the court two days per week, to assess court referrals.

Funding: Ministry of Health (Ontario)

THE CATHOLIC SOCIAL SERVICES OF HAMILTON

A family service agency providing a range of services related to social problems that disrupt individual and family living. This agency:

- provides casework service for individuals and families facing a variety of crisis situations and long-term problems in social functioning;
- maintains a credit counselling department;
- assists the aged and infirm through direct service and referrals;
- advises new Canadians;
- operates a home for unmarried mothers.

Funding: Private - United Way, church

Government - Hamilton-Wentworth Regional Government,
Ministry of Community and Social Services

THE CATHOLIC CHILDREN'S AID SOCIETY OF HAMILTON

A private agency serving Catholic children and families within the provision of the Child Welfare Act and board policy. The agency provides individual and group counselling and other services to Catholic parents and their children in their own homes. Selects and supervises foster homes where Catholic children are placed as wards or with the consent of parents. Assists Catholic unmarried mothers. Places Catholic

children who are legally available and emotionally able to benefit by adoption. Supervises adoption placements and assists in finalizing adoptions through the court.

Funding: Ministry of Community and Social Services (Ontario)

CHEDOKE CHILD AND FAMILY CENTRE

A regional children's centre providing assessment and treatment services for emotionally disturbed, mentally retarded, physically handicapped, and chronically ill children. Included in its programmes are general out-patient services for children and their families, a therapeutic pre-school, day care services, residential assessment and treatment services, a parent therapist programme, an alternative school and general assessment and treatment services for adolescents.

Funding: Ministry of Community and Social Services (Ontario)

CHILD AND ADOLESCENT SERVICES

The Child and Adolescent Services, under the aegis of the Board of Health of the City and County, provides out-patient services for children and adolescents. The clinic is organized into therapeutic teams consisting of psychiatrists, psychologists, psychometrists, social workers, child care workers, paediatricians and speech pathologists. Referral sources include courts, schools, public health nurses, medical practitioners, welfare agencies, and parents themselves.

Funding: Ministry of Community and Social Services (Ontario)

THE CHILDREN'S AID SOCIETY OF HAMILTON-WENTWORTH

A government funded agency with a private board of directors serving children, adolescents and families. Services provided are determined by the Ontario Child Welfare Act: Development of preventive community programmes designed to forestall the breakdown of family relationships; counselling services to children and their parents when there are family problems. Selection of foster family settings; placement and supervision of children in foster care settings - either with the consent of their parents or under order of the court - when the child cannot be helped in his own home. Assistance to single pregnant girls; adoption placement of infants and older children who are legally and emotionally free for

adoption. Supervision, finalization of adoptions through the court and ongoing assistance to adoptive families.

Funding: Ministry of Community and Social Services (Ontario)

FAMILY SERVICES OF HAMILTON-WENTWORTH

Family Services is a multi-service, multi-discipline agency whose services include:

- marital therapy or counselling;
- crisis intervention for newly separated persons;
- help with parent-child relationships;
- individual counselling;
- group counselling;
- basic living skills counselling;
- personal services to senior citizens;
- special counselling for juvenile probations and their families provided in collaboration with the Ministry of Community and Social Services;
- credit/debt counselling;
- family life programme for parents and pre-school children;
- youth residence.

Funding: Private - United Way

Government - Hamilton-Wentworth Regional Government,
Ministry of Community and Social Services

PARENTAL SUPPORT PROGRAMME

Assists persons receiving financial assistance under the Family Benefits Act by advising clients of alternative means to securing financial support from the other parent and helping the parties to work out a plan by which both parents assume financial responsibility for themselves and their children. Parental support workers are present at the court three days per week to assist the debtor and the court to find an arrangement for the payment of arrears. They refer clients to the conciliation services and to other community agencies.

Funding: Ministry of Community and Social Services (Ontario)

PUPIL ADJUSTMENT SERVICES, HAMILTON BOARD OF EDUCATION

Assistance to pupils having social, emotional and/or educational problems affecting their progress and adjustment to the normal school programme.

Services offered include:

- school and home visiting service to assist principals, teachers and parents;
- consultation service to assist principals, teachers and other school personnel;
- a co-ordinating service between the schools and other appropriate community resources dealing with children.

REGIONAL SOCIAL SERVICES

Service to low income clients as well as clients receiving regional government assistance provided by two branches: income maintenance and special services. Income maintenance helps clients secure support from a spouse or parent of a child requiring support through the court liaison workers in this branch. Special services provides counselling and home management services, acting as a family service agency within the Regional Social Services Department.

Funding: Regional Municipality of Hamilton-Wentworth

ST. JOSEPH'S HOSPITAL, COMMUNITY PSYCHIATRIC SERVICES

A community psychiatric service to the geographic core of Hamilton serving adults of 18 years of age and over with both short-term and long-term psychiatric illnesses and working with a wide variety of community resources on a liaison and consultation basis.

Funding: Ministry of Health (Ontario)

Report on the
Unified Family
Court of the
Judicial District
of Hamilton-
Wentworth, Ont.

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Hamilton-Wentworth,
Ontario.

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